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ABSTRACT

This document publicizes the collective bargaining agreement between the U.S. Department of Education and the National Council of Department of Education Locals, Council 252, American Federation of Government Employees, effective February 23, 1995. It contains all articles and sections of that agreement pertaining to the following subheadings: (1) General Provision; (2) General Rights, Responsibilities, and Relationships; (3) Personnel Programs, Policies, and Procedures; (4) Working Conditions and Related Articles; and (5) Problem Resolution Procedures. Contained in the Agreement is a "Memorandum of Understanding" between the Council of Education Locals, No. 252, and the United States Department of Education which lists further details of a Collective Bargaining Problem Resolution Procedure and the Informal Dispute Resolution Center Process as a prerequisite for employee grievances as well as other details regarding election of procedures and time limits. (DFR)

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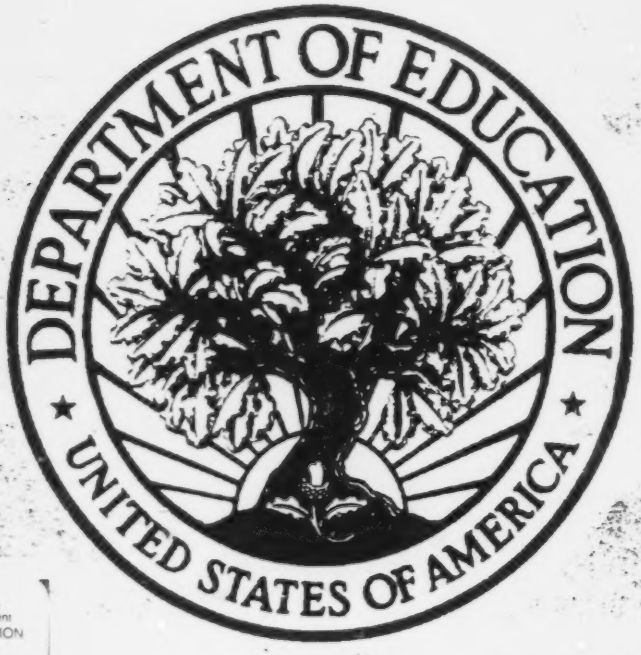
COLLECTIVE BARGAINING AGREEMENT

ED 441 277



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BETWEEN THE
U.S. DEPARTMENT OF EDUCATION
AND THE
NATIONAL COUNCIL OF
DEPARTMENT OF EDUCATION LOCALS
COUNCIL 252
AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES

EFFECTIVE: FEBRUARY 23, 1995

EA 030404

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ARTICLE 1 PARTIES TO THE AGREEMENT AND DEFINITION OF UNIT

Section 1.01 This Agreement is made and entered into between the United States Department of Education, hereinafter referred to as the Employer, the Department, or Management, and the American Federation of Government Employees, AFL-CIO through its agent, National Council of Education Locals No. 252, hereinafter referred to as the Union or the Council, and collectively known as the Parties.

Section 1.02 The Federal Labor Relations Authority on July 22, 1981, in Cases Nos. 3-RO-71 and 3-RO-72, certified the Union as exclusive representative for a bargaining unit of all professional and nonprofessional employees of the Department, but excluding the following as set forth therein:

(a) Management officials and supervisors;

(b) Confidential employees;

(c) Employees engaged in personnel work in other than a purely clerical capacity;

(d) An employee engaged in administering the Federal Labor-Management Relations Program;

(e) Employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security;

(f) Employees primarily engaged in investigation or audit functions relating to the work of individuals employed by the Department;

(g) Employees of the Office of Inspector General; [The Office of Inspector General is excluded, by agreement, because of the existing organization of its functional responsibilities.]

(h) Experts and consultants;

(i) Intermittent employees;

(j) Employees hired under the summer employment program and employees under student appointments (except those in the Cooperative Education Program);

(k) Faculty advisers;

(l) Employees appointed under fellowship programs;

(m) Schedule C employees;

(n) Members and staff of independent agencies, boards, commissions and councils for which the Department provides administrative services; and

(o) Employees on temporary appointments of ninety (90) days or less.

ARTICLE 2 PURPOSE

The Employer and Union agree to work to advance the cause of American education, and to improve the working conditions and productivity of all employees of the Department. Subject to the law and the requirements of public service, it is the intent of this Agreement to provide a clear statement of the respective rights and obligations of employees, the Union and the Employer so that constructive labor-management relations may be furthered and facilitated. More specifically, it is the purpose of this Agreement to:

(a) state the policies, procedures, and methods that will govern the working relationship between the Parties;

(b) indicate and provide for the resolution of matters of proper mutual concern; and

(c) through the Union, ensure employee participation, as authorized by the FSLMRS, regulation, and the provisions of this Agreement, in the formulation and implementation of personnel policies and practices and matters affecting general working conditions of unit employees.

ARTICLE 3 DEFINITIONS AND APPLICATIONS

As used in this Agreement and for purposes of its interpretation:

Section 3.01 "FSLMRS" or "the Statute" means the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5, United States Code.

Section 3.02 "Employee" means a member of the bargaining unit described in Article 1 of this Agreement.

Section 3.03 "Negotiate" has the meaning given to it by the FSLMRS. It encompasses the obligation of the Parties to bargain collectively by meeting at reasonable times in a good faith effort to reach agreement; however, this does not compel either the Union or the Employer to agree to a proposal or to make a concession.

Section 3.04 "Consult" means to meet in good faith for the purpose of exchanging information on proposed plans or activities and to provide an opportunity to exchange views or opinions.

Section 3.05 "Discuss" means to exchange, informally, views or opinions.

Section 3.06 "National Collective Bargaining Official" is the management official of the Employer to whom responsibilities referred to in this Agreement have been delegated.

Section 3.07 "Labor Relations Officer" means the Director, Labor Relations Group, or designee.

Section 3.08 "Union representative" and "special representative" are defined in Article 14 (Union Representatives and Official Time).

Section 3.09 When this Agreement refers to duties to be performed by named officials of the Employer or the Union (e.g., the "National Collective Bargaining Official," "Labor Relations Officer," "supervisor", "Council President," or "Chief Steward"), it is understood that the Parties reserve their respective rights to assign these duties, and have them performed, by other officials.

Section 3.10 "Official time" is a type of excused absence during normal work hours when representational activities may be performed by Union representatives as specifically provided for in this Agreement. Such

individuals shall be paid at their normal rate of pay during such periods.

Section 3.11

When such terms as "applicable laws, rules, and regulations," are used in this Agreement, they are intended to refer to that body of Federal laws, regulations and rulings of Federal agencies, and the rulings and decisions of appropriate authorities, such as the Comptroller General, to which the Employer, its employees and the Union are subject, consistent with the terms of the FSLMRS.

Where this Agreement makes reference to Department of Education policies, directives, or regulations, the Parties intend that the policies, directives or regulations to be applied are those which are in effect at the time of the action referred to in the Agreement. It is not the Parties' intention, by merely referencing them, to fix the specific terms of such policies, directives or regulations for the duration of this Agreement. Rather, each Party reserves any right it may have under the law or this Agreement to propose and negotiate changes to those policies, directives or regulations.

ARTICLE 4 COPIES AND DISTRIBUTION OF AGREEMENT

Section 4.01 As soon as practicable following the effective date of this Agreement, the Employer agrees to distribute a copy of this Agreement to each employee.

Section 4.02 The Employer also agrees to distribute a copy of the Agreement to each new employee and supervisor.

Section 4.03 Fifty (50) copies of the Agreement shall be made available to each Union local for its own use, and 200 copies to the Council.

Section 4.04 Costs of reproduction and distribution of this Agreement will be assumed by the Employer.

Section 4.05 The Employer agrees to distribute to each employee any new agreements which modify existing contractual provisions.

ARTICLE 5 EFFECTIVE DATE AND DURATION OF AGREEMENT AND NEGOTIATION OF SUBSEQUENT AGREEMENTS

Section 5.01 The Employer and the Union agree that for the full term of the Agreement (as set forth in Section 5.02 and, as may be applicable, in Section 5.03), the provisions of this Agreement shall remain in full force and effect and unchanged except as mutually agreed, or as may be required by applicable law.

Section 5.02

(a) This Agreement shall remain in effect for three (3) years from the effective date shown on the cover of the Agreement.

(b) However, for a period of sixty (60) calendar days commencing on the eighteenth (18th) month anniversary of the effective date of this Agreement, either Party may propose to reopen two articles of this Agreement by submission of any written negotiable proposals for that article to the other Party. If no proposals are received by the expiration of the sixty (60) day period no articles may be reopened.

Section 5.03

(a) This Agreement shall be automatically renewed from year to year thereafter unless one Party gives the other written notice of its intention to renegotiate this Agreement no less than sixty (60) nor more than ninety (90) calendar days prior to its expiration date. If notice to renegotiate is given, the Agreement shall be extended for one year or until a new agreement becomes effective, whichever is earlier.

(b) At the time this Agreement is extended or renewed, the Parties will negotiate, consistent with applicable law, concerning any changes in this Agreement that may be required by changes in government-wide rules or regulations.

Section 5.04 In the event that one of the Parties decides to renegotiate this Agreement as provided for in Section 5.03, the following procedures will apply:

(a) Representatives of both Parties shall meet within seventy-five (75) calendar days after notice to renegotiate is given to arrange for ground rules negotiation, including designation of the time and place for general negotiations on the new agreement.

(b) Ground rules negotiation shall be held at the Employer's headquarters in Washington, DC. Each Party shall be represented by two persons. Appropriate travel and per diem shall be provided to up to two Union negotiators.

(c) Each Party will designate a chief negotiator who will have appropriate collective bargaining authority.

(d) The Employer will make a room available for negotiations.

Section 5.05 The Employer and the Union agree that initial training in contract administration is necessary. Each Local will designate Union representatives to be trained by Council Officers. Official time will be granted Union representatives to participate in contract administration training. The amount of official time needed, and whether or to what extent travel and per diem may be provided, will be negotiated.

ARTICLE 6 EMPLOYEE RIGHTS AND RESPONSIBILITIES

Section 6.01 Statutory Rights

(a) Each employee shall have the right to form, join, or assist any labor organization, or to refrain from such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of this right. Such right includes the right to: (1) act for a labor organization in the capacity of a representative; and, (2) through representatives chosen by employees under the provisions of the Statute, engage in collective bargaining, in accordance with the provisions of the law and this Agreement, with respect to conditions of employment.

(b) Nothing in this Agreement will require an employee to become or remain a member of a labor organization, and no employee shall be required by this Agreement to have labor organization dues withheld except pursuant to a voluntary written authorization by a member for dues withholding (see Article 16).

(c) All employees in the unit have the right to be represented fairly by the Union without discrimination and without regard to labor organization membership.

(d) Bargaining unit employees have the right to Union representation at any examination by a representative of the Employer in connection with an investigation if:

(1) the employee reasonably believes that the examination may result in disciplinary action against the employee, and

(2) the employee requests Union representation.

The Employer shall annually inform employees in writing of their rights under this section.

(e) Bargaining unit employees have and shall be protected in the exercise of their statutory rights. It is also recognized that those same employees shall be responsible for performing their assigned work in a professional, diligent, and efficient manner in order to promote the mission of the Department.

Each employee will be responsible for working cooperatively and constructively with the Employer in an attempt to resolve differences reasonably, promptly, and at the lowest constructive level.

Section 6.02 Raising Work-Related Concerns

(a) An employee is free to bring individual concerns about personnel policies, practices, and matters affecting working conditions to the attention of his/her immediate supervisor, or, as may be appropriate, other Employer officials. Normally the employee should attempt to resolve concerns at the lowest constructive level.

(b) Should concerns not be resolved at the lowest constructive level, or if such resolution is not feasible, an employee may communicate with a Union representative, a Personnel Office representative, an equal employment opportunity representative, or an Employer official of higher rank than the employee's immediate supervisor.

(c) With respect to Section 6.02(b), an employee shall be excused from official duties for such reasonable time as is necessary by his/her immediate supervisor as soon as practicable. It is recommended that under normal circumstances the employee shall schedule an appointment with the appropriate person and be released upon his/her request. If, because of bona fide work-related considerations, the supervisor cannot release the employee upon request, the supervisor shall provide the employee with the work-related reasons for the decision and, with the employee, mutually agree on a time for release. In the event a mutually agreeable time cannot be reached, the employee will then be released for the time scheduled following the resolution of the work-related consideration which required the postponement of the initial request. Employees agree to request release time only for the purposes stated in Section 6.02 (a) and (b).

(d) An employee with a work-related concern who wishes to preserve his/her right to file a grievance under this Agreement, must raise the concern within the time limits and under the procedures contained in Article 42, Section 42.05 of this Agreement.

Section 6.03 The Employer shall not without the employee's knowledge place in an employee's Official Personnel Folder (OPF) material of any nature which reflects adversely upon an employee's character or Government career. If the Employer intends to place any such material in the OPF, the Employer shall give the employee the opportunity to rebut it in writing and to have the rebuttal included along with the material. No employee or employee representative may remove or attempt to remove any material from an employee's OPF. Should an employee believe that material is improperly included in the OPF or wish to reproduce any material in the OPF, he/she shall call the matter to the attention of the Personnel Office representative having custody of the OPF. The employee or his/her representative shall observe the Employer's policies and practices pertaining to removal or reproduction of materials in the OPF.

Section 6.04 No employee shall be required or coerced by the Employer or the Union to invest money, make political contributions, donate to charity, or participate in activities or undertakings not related to the performance of official duties.

Section 6.05 No employee shall be required to disclose his/her religion, race, ethnic group, or political affiliation, except as may be required in accordance with law.

Section 6.06 Employees have the right (consistent with General Services Administration regulations and other appropriate authorities) to decorate their working areas with paintings, posters, photographs, and other artistic or symbolic representations, in good taste. The employee has the responsibility to see that Government owned or controlled property is not defaced and that its intended purpose is not impaired. When there is a question as to whether or not certain decorations are in good taste, the Employer shall consult the Union prior to making a decision on the action to be taken.

Section 6.07 An employee's use of a radio and other audiovisual equipment, whether or not audible to other individuals, is subject to the written approval of the employee's supervisor.

Section 6.08 Employees are responsible for assuring that their conduct comports with the Standards of Ethical Conduct for Employees of the Executive Branch and Department of Education supplements to those Standards.

Section 6.09 The Employer shall consider written requests for outside employment. The Employer shall determine whether these activities are compatible with applicable laws or regulations, and the

Department's supplements. The employee shall submit the request to the Employer as far in advance as possible to allow a timely review by the Employer and a timely response to the employee.

ARTICLE 7 EMPLOYER-UNION RIGHTS AND RESPONSIBILITIES

Section 7.01 The Employer and Union recognize that the right of employees to organize and bargain collectively, through the Union, and thereby participate in decisions which affect them, is in the public interest.

The provisions of this negotiated Agreement were established and should be interpreted in a manner consistent with the purposes of the FSLMRS and the requirements for an effective and efficient Government.

Section 7.02 The Parties recognize that Executive Order 12871, October 1, 1993, calls for involving employees and their Union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission and to negotiate over the subjects set forth in Section 7.03 (f) and (g) of this Agreement. The Parties are committed to the success of their partnership activities under the Executive Order for such time as the Order remains in effect, or as it may be amended. Any problems or disagreements which may arise concerning implementation of the Order shall be addressed through forums established through the partnership, and shall not be subject to the grievance and arbitration procedures of this Agreement.

Section 7.03 The Parties recognize that the right of Federal employees to bargain collectively, through the Union, described in the provisions of this Agreement, is also subject to limitations imposed on both by statute which reserve to the Employer the right to:

(a) Determine the mission, budget, organization, number of employees, and internal security practices of the Department;

(b) Hire, assign, direct, layoff, and retain employees in the Department, or suspend, remove, reduce in grade or pay, or take other disciplinary actions against such employees;

(c) Assign work, make determinations with respect to contracting out, and determine the personnel by which Department operations shall be conducted;

(d) With respect to filling positions, make selections for appointments from:

(1) among properly ranked and certified candidates for promotion, or

(2) any other appropriate source;

(e) Take whatever actions may be necessary to carry out the Department mission during emergencies;

(f) Determine numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty; and

(g) Determine the technology, methods, and means of performing work.

However, the Parties also recognize that the Employer and the Union may negotiate:

(a) Procedures which management officials of the Employer will observe in exercising any authority under this section; or

(b) Appropriate arrangements for employees adversely affected by the exercise of the management rights listed above.

Section 7.04 (a) Any election by the Employer to discuss a subject referred to in Section 7.03(f) and (g) shall not be a waiver of its rights on the remaining subjects in Section 7.03(f) and (g). Moreover, the Employer expressly reserves the right to withdraw any subject referred to in Section 7.03(f) and (g) from discussion at any time.

(b) The Parties further recognize and agree that discussions concerning any matters referred to in Section 7.03(f) and (g) which may form the basis for labor-management understandings are binding only pursuant to a written memorandum of understanding executed by the duly authorized representatives of the Employer and the Union.

Section 7.05 The Employer recognizes that the Union and its designated representatives have the right, and shall be protected in the exercise of the right, consistent with the provisions of the law and this Agreement to:

(a) Engage in collective bargaining;

(b) Handle grievances and appeals;

(c) Represent employees by being afforded the opportunity to be present at:

(1) any formal discussion between one or more representatives of the Department and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment, or

(2) any examination of an employee in the unit by a representative of the Department in connection with an investigation if:

(A) the employee reasonably believes that the examination may result in disciplinary action against the employee, and

(B) the employee requests representation.

Section 7.06 The Employer recognizes that, to facilitate fulfillment of the goals in Section 7.01, the FSLMRS provides that in the lawful exercise of representational rights in accordance with statute and the terms and conditions of this Agreement, the Union and its officials must be held free from penalty, restraint, or reprisal.

Section 7.07 The Union and Employer recognize that their mutual and respective obligations to honor the terms and conditions of this Agreement include fairly and factually representing and communicating to employees and to managers, as appropriate, their rights and responsibilities under this Agreement, statute, or regulation. Where disputes arise concerning the interpretation or application of this Agreement or of applicable law or regulation, or an alleged breach thereof has occurred, the Parties agree to first seek informal resolution before invoking other statutory recourse.

Section 7.08 In exercising their respective rights, or in fulfilling their respective obligations, the Employer and Union agree to do so in a manner which:

(a) fosters a spirit of labor-management cooperation and mutual respect;

(b) recognizes the obligation as public employees to prudently, judiciously, efficiently, and with due regard to the need for economy, exercise representational or managerial rights assigned herein;

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(c) promotes effective and informed communication between supervisors and employees which is essential to improve employee performance, develops employee skills, enhances employee satisfaction, and promotes amicable dispute resolution;

(d) fosters organizational stability and promotes labor-management harmony; and

(e) is consistent with the procedures, processes, and provisions, set out in the specific articles of this Agreement.

Section 7.09

(a) Management will not exercise improper interference, coercion, or censorship of any protected written communication between the Union and employees that is distributed in accordance with the provisions of this Article and elsewhere in this Agreement.

(b) The Union agrees that solicitation of membership, collection of dues and other internal Union business communications, such as distribution of Union notices and newsletters, will only be conducted by Union representatives who are in a non-work status and when prior notification is given to the area supervisor.

Except for such activities as distribution of Union materials where no contact occurs between the distributor and unit employees, employees must also be in a non-work status to participate in internal Union business. If such business is conducted in a work area during work hours, it is agreed that there will be no disruption of the work process.

(c) The Union also agrees that materials will be posted only on authorized bulletin boards as provided for in Article 15. The Union agrees that all such material posted will not impugn the integrity, motives, or character of any individuals.

(d) The Employer and the Union shall fairly and accurately present factual information, and take immediate action to correct errors.

Section 7.10

The Union will be notified of scheduled employee orientation sessions and up to two (2) Union representatives will be permitted to make a presentation of 15-20 minutes at the conclusion of each session regarding the Union and its status as the exclusive representative for Department employees. The designated Union officials

will be allowed official time to make such presentation in accordance with the provisions of Article 14. The Union agrees that membership solicitation will not be conducted at these sessions. The Union may leave its literature in a location where the employees leaving the orientation have access to the materials.

Section 7.11 The Union recognizes that the Employer has the right to communicate directly with employees, through such means as surveys or questionnaires, for the purpose of gathering information, suggestions or opinions concerning conditions of employment. The Employer agrees to provide the Union prior notification before distributing such surveys or questionnaires to unit employees. The Employer may not use these communications to unlawfully bypass the Union by negotiating directly with unit employees concerning matters which are properly bargainable with the Union.

Section 7.12 The Union will present the Employer at each facility with an updated list of Union officers and representatives annually. The Employer will communicate this list in writing to each unit employee within twenty (20) work days after its receipt.

ARTICLE 8 LABOR-MANAGEMENT NEGOTIATING PROCEDURES

Section 8.01 The Union and the Employer agree to be bound to the terms of this Agreement without regard to geographical location or organizational component. The Parties agree, as expressed in Article 5 (Effective Date and Duration of Agreement and Negotiation of Subsequent Agreements), that the terms of this Agreement shall remain unchanged during its entire term except as provided by Article 5, or as may be required by law.

Together with Article 9, this Article governs the mid-term bargaining relationship of the Parties over matters which are not covered in this Agreement. The procedure contained in Section 8.04 deals specifically with negotiations at the level of recognition (i.e., Department level). Matters which may be negotiated at the local level are described and provided for in Article 9. Apart from Section 8.04, provisions of this Article also apply to mid-term negotiations at the local level.

Section 8.02 Provisions of existing Department rules, regulations, or other formal directives or policies which are inconsistent with this Agreement are superseded, as of the effective date of this Agreement, with respect to their applicability to bargaining unit employees.

Section 8.03 Past Practices and Memoranda of Understanding

(a) (1) Any past practices or provisions of written memoranda of understanding or agreement which are in existence on the effective date of this Agreement, and which are inconsistent with the terms of this Agreement, are superseded. Such matters shall be governed by the terms of this Agreement.

(2) Any existing written memorandum of understanding or agreement which has a specific term or duration extending beyond the effective date of this Agreement shall continue in effect until its expiration date, subject to the terms of Section 8.03(a)(1).

(A) Any such memorandum of understanding which contains no provisions described in Section 8.03(a)(1) shall, upon its expiration, be subject to renegotiation in accordance with the FSLMRS and this Agreement.

(B) Any such memorandum of understanding which contains provisions described in Section 8.03(a)(1) may be reopened upon request of either Party in order to renegotiate any provisions affected by the operation of that section.

(3) Other existing past practices or provisions of written memoranda of understanding or agreement, on matters which are not covered by this Agreement and are not inconsistent with it, shall be treated as past practices. Such past practices shall not be considered to be incorporated into this Agreement with respect to duration, and shall be subject to renegotiation in accordance with the FSLMRS and this Agreement. Although neither Party shall be required to maintain a past practice which is unlawful or which constitutes a waiver of any right granted to it under the FSLMRS, discontinuation of any such past practice shall be subject to any negotiation requirements established by the FSLMRS.

(b) (1) If, after the effective date of this Agreement, any practice develops which is inconsistent with this Agreement, either Party may require the other to conform to this Agreement by providing adequate prior notice of its intention to enforce this Agreement in the future. Thereafter, both Parties shall conform to the terms of the Agreement.

(2) Memoranda of understanding or agreement negotiated under the terms of this Article or Article 9 shall be considered to be part of this Agreement and shall have a duration concurrent with this Agreement, unless otherwise specified in the memoranda.

(3) Provisions of local agreements negotiated under Article 9 of this Agreement shall be superseded by any subsequently negotiated agreement at the level of recognition, or any subsequently issued Government-wide rule or regulation, or Department policy, with which the local agreements are inconsistent. However, the local Parties may amend those provisions of their local agreements to conform to the higher level agreement or policy.

Section 8.04 Mid-term Negotiations at the Level of Recognition

The Parties agree to negotiate during the term of this Agreement, to the extent required by law and consistent with the terms of this Agreement, on changes in conditions of employment, whether initiated by the Employer or by the Union. Except as specified in Article 9, all negotiations shall be carried out at the level of exclusive recognition (i.e., at the Council and Department level).

(a) Initial Notice. A Party desiring, or required, to make a change shall notify the other Party in writing of the proposed change. The notification shall include, as appropriate, the proposed date of implementation, if any. The receiving Party will advise the initiating Party, orally or in writing, within five (5) work days of receipt of the notice, whether or not it wishes to negotiate concerning the change.

(b) Informal Discussions and Resolution. At any time during the notification and negotiation procedure described in this Section, the Parties may informally discuss and undertake efforts to resolve concerns about the proposed changes. Agreements or understandings reached informally shall be documented by appropriate means.

(c) Negotiation Procedure. The procedure contained in this subsection shall constitute the ground rules for negotiations under this Section, unless the Parties mutually agree to negotiate additional ground rules.

(1) If formal negotiations are required to resolve differences concerning any proposed change, the negotiations will begin no later than ten (10) work days after receipt of the notice of change, unless both Parties agree to an extension. The Party requesting negotiations must provide written proposals to the other Party at least three (3) work days before the first negotiation session. The Parties shall make use of teleconferences, FAX machines, mail, etc., to clarify issues and provide necessary information prior to any negotiation session. Negotiation sessions shall be conducted by telephone, by FAX machine, by mail, or in person, subject to agreement of the Parties. If meetings are required for negotiations at the level of recognition, they shall be held in Washington, DC, unless another location is mutually acceptable to the Parties. For negotiations of management-initiated

changes, the Employer agrees to pay travel expenses and per diem for two (2) of the Union negotiators referred to in Section 8.04(c)(2). Payment of travel and per diem shall be subject to applicable law, rule, and regulation, including established Department of Education travel policies.

(2) If a meeting is required during the negotiation process in this Article, the Union shall be entitled to the same number of negotiators at the bargaining table as management designates. Prior to deciding on the number of management members, the Employer will discuss the appropriate size of the respective negotiating teams with the Union. Where practicable and agreeable, the Parties shall coordinate negotiations meetings with other scheduled meetings.

(3) Official time for negotiations under this Section shall be as provided by 5 U.S.C. §7131(a) and Article 14 of this Agreement.

(4) Each Party will designate a chief negotiator who will have appropriate collective bargaining authority.

(5) Negotiations shall be completed within thirty (30) work days of initial notification, unless the initiating Party specifies a different time limit in its initial notice. However, the initiating Party may, at any time, extend the time frame set in the notice for completion of negotiations, upon notice to the receiving Party. After one extension by the initiating Party, further extensions must be mutually agreed upon.

(6) Proposals made by the receiving Party must be negotiable and must be directly related to the proposed change. This does not prevent either Party from separately initiating negotiations over indirectly related or unrelated matters, as may be permitted by the FSLMRS and this Agreement. If the Parties agree, negotiations on different proposed changes may be consolidated or held concurrently.

(7) At any point in the formal or informal process the initiating Party may elect to withdraw any proposed change, in whole or in part. However, nothing contained in this paragraph shall prevent either Party

from subsequently initiating negotiations over the same subject matter.

(8) When an agreement is reached, it will be typed in final form and signed by both Parties. Such agreements and understandings shall conclude negotiation on such matter(s).

Section 8.05 The Parties agree that there may be circumstances which would require the Employer to implement or make changes prior to the completion of the bargaining process. Such actions may also be necessary even though opportunities for statutory dispute resolution have not been completed. The Employer, however, may only implement procedures or changes where: (a) an emergency exists; (b) it is compelled to do so by higher law or authority; or (c) a delay would have serious impact on the Department, its employees, or programs. If management elects to take such action it shall provide the Union with written reasons for doing so.

Section 8.06 Both Parties agree to be bound to the resolution of submitted issues imposed by the formal dispute resolution procedures of the Statute. If such decisions are inconsistent with the action taken by Management, the Employer shall conform to any such final resolution retroactively except where such an application is not practicable or would be unnecessarily disruptive. Upon making such a determination, the Employer shall negotiate with the Union concerning what alternative action, if any, would be appropriate for retroactive application.

ARTICLE 9 MID-TERM NEGOTIATIONS AT THE LOCAL LEVEL

Section 9.01 The Parties agree that no local agreement may delete, modify or otherwise nullify any provision of this Agreement; nor shall any provision in a local agreement be in conflict with or duplicate any provision of this Agreement, statute, government-wide regulation, or written regulation/policy of the Department which is applicable to more than one Department installation. All local agreements shall be part of and subject to the terms and control of this Agreement.

Section 9.02 Local negotiations shall be limited to solely local matters within a specific region or headquarters. Subject matters for local negotiations do not include such matters as:

(a) subject matter already contained in this Agreement;

(b) interpretation and application of this Agreement;

(c) subject matter that has been the subject of bargaining at the Department level; or

(d) subject matter affecting employees, the Union or the Employer at another installation or Department-wide.

Section 9.03 Local Negotiations

The Parties agree to negotiate during the term of this Agreement, to the extent required by law and consistent with the terms of this Agreement, on changes in conditions of employment, whether initiated by the Employer or by the Union.

(a) Initial Notice. A Party desiring, or required, to make a change shall notify the other Party in writing of the proposed change. The notification shall include, as appropriate, the proposed date of implementation, if any. The receiving Party will advise the initiating Party, orally or in writing, within five (5) work days of receipt of notice, whether or not it wishes to negotiate concerning the change.

(b) Informal Discussions and Resolution. At any time during the notification and negotiation procedure described in this Section, the Parties may informally discuss and undertake efforts to resolve concerns about the proposed changes. Agreements or understandings reached informally shall be documented by appropriate means.

(c) Negotiation Procedure. The procedure contained in this subsection shall constitute the ground rules for negotiations under this Section, unless the Parties mutually agree to negotiate additional ground rules.

(1) If formal negotiations are required to resolve differences concerning any proposed change, the Parties agree to establish a date, time and place for negotiations which are consistent with the provisions of this Article. Negotiations will begin no later than ten (10) work days after receipt of the notice of change, unless both Parties agree to an extension. The Party requesting negotiations must provide written proposals to the other Party at least three (3) work days before the first negotiation session. Negotiations may be conducted by telephone, by FAX machine, by mail, or in person, subject to agreement of the Parties. Any meetings required shall be conducted at the regional office or headquarters installation for which the change is proposed.

(2) If a meeting is required during the negotiation process in this Article, the Union shall be entitled to the same number of negotiators at the bargaining table as management designates. Prior to deciding on the number of management members, the Employer will discuss the appropriate size of the respective negotiating teams with the Union. Where practicable, the Parties shall coordinate negotiation meetings with other scheduled meetings.

(3) Official time for local negotiations shall be as provided by 5 U.S.C. §7131(a) and Article 14 of this Agreement.

(4) Each Party will designate a chief negotiator who will have appropriate collective bargaining authority.

(5) Negotiations shall be completed within twenty-five (25) work days of initial notification, unless the initiating party specifies a different time limit in its initial notice. However, any extension of the time frame set in the notice for completion of negotiations must be mutually agreed upon.

(6) Proposals made by the receiving Party must be negotiable and must be directly related to the proposed change. This does not prevent either Party from separately initiating negotiations over indirectly related or unrelated matters as may be permitted by the FSLMRS and this Agreement. However, if the Parties agree, negotiations on different proposed changes may be consolidated or held concurrently.

(7) At any point in the formal or informal process the initiating Party may elect to withdraw any proposed change, in whole or in part. However, nothing contained in this paragraph shall prevent either Party from subsequently initiating negotiations over the same subject matter.

(8) When an agreement is reached, it will be typed in final form and signed by both Parties. Such agreements and understandings shall conclude negotiation on such matter(s).

Section 9.04 If appropriate representatives of the Employer and the Union disagree as to whether a proposal is solely local for the purposes of any local agreement, they shall jointly refer the question in writing to both the Council President and the National Collective Bargaining Official for discussion and resolution. If they disagree, the Party wishing to negotiate the matter in question may file a National Grievance under the procedures described in Article 42. Issues of negotiability shall be resolved in accordance with the FSLMRS and the regulations of the Federal Labor Relations Authority.

Section 9.05 Once completed, local agreements must be sent to the Parties at the Department level. The Employer shall review local agreements for conformance with this Article, and in accordance with section 7114(c) of the Statute. The review for conformance with this Article shall be accomplished within the same time frame specified for section 7114(c) review.

ARTICLE 10 REORGANIZATION IMPLEMENTATION PROCEDURES

Section 10.01 As used in this Agreement, "reorganization" means organizational change, including transfer of function, involving the elimination, addition, or redistribution of functions or responsibilities among or within Department components.

Section 10.02 Disclosure of Plans to Reorganize

(a) When plans for a reorganization are complete and the necessary administrative approvals secured, the Employer will notify the Union and provide, as appropriate, the following information:

(1) reason(s) for the reorganization;

(2) approved functional or mission statements and organizational charts for the existing and proposed organization(s);

(3) staffing chart(s) for both the existing and proposed organizational component(s), including the identification of employees currently on details or temporary promotions;

(4) a list of projected details (i.e., interim assignments to positions or duties in the new organization) that will be made prior to reassignment of employees to the new organization;

(5) a list of the officially classified unit position descriptions then completed, if any, and the positions for which such classification action is pending;

(6) a list of any known changes in career ladder promotion potential for unit employees' positions;

(7) a list of known unit vacancies in the new organization, if any;

(8) the proposed implementation schedule and any proposed employee notices; and

(9) projected adverse impact resulting from the reorganization, if any. As used here, "adverse impact" means any action that negatively affects terms and

conditions of employment that may result from the reorganization.

(b) Questions or disputes over the accuracy or completeness of the above information will not delay the beginning of negotiations. However, the Employer shall supply any of the information if it becomes available after the initial notification.

Section 10.03 Negotiation

(a) The Employer shall notify the Union, by providing the information listed in Section 10.02(a), and shall negotiate in accordance with, and to the extent provided by, the provisions of Article 8 or 9, as applicable. Notice in this manner shall constitute sufficient notice under Article 8 or 9 of this Agreement.

(b) The Parties agree that actions which are incidental to a reorganization, such as details or reassignments, changes in performance plans, physical moves, reductions in force, etc., shall be governed by the applicable Article(s) of this Agreement and by applicable laws, regulations, and written agency policies. However, implementation of types of actions which are not covered by this Agreement or by written agency policies shall be subject to negotiation, as appropriate, under Article 8 or 9.

Section 10.04 The Parties agree that early sharing of information and concerns, and early discussion of issues arising from proposed reorganizations, should promote resolution of issues and expedite the negotiation process. Therefore, Union and Employer officials are encouraged to communicate with each other and informally discuss concerns as early as practicable in the reorganization process.

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ARTICLE 11 CONTRACTS WITH NON-GOVERNMENT ORGANIZATIONS AND INDIVIDUALS

Section 11.01 Prior to contracting out agency work, the responsible management official shall make a determination as to whether the procurement could reasonably be anticipated to adversely affect bargaining unit employees by contracting out work which is normally performed by bargaining unit employees. If so, for procurements not covered by Section 11.03, below, the Employer shall notify the Union using an impact statement which shall be jointly designed by the Employer and the Union. Notification under this Section shall be deemed to meet the notification requirements of Articles 8 and 9 of this Agreement. If the Union wishes to negotiate, it will respond to the Employer in accordance with Article 8 or 9, as applicable. The Employer shall negotiate as required by law and this Agreement.

Section 11.02 As used in this Article, the term "adversely affect" shall be interpreted in a manner consistent with the term "adversely affected" in section 7106(b)(3) of the Statute and applicable case law.

Section 11.03

(a) Should the Employer decide to contract out an activity after using the procedures contained in Office of Management and Budget (OMB) Circular A-76, Performance of Commercial Activities, affecting unit employees, the Employer shall notify the Union when the decision has been made, where required by Article 8 or 9 of this Agreement, and negotiate impact and implementation in accordance with the terms of Article 8 or Article 9, as applicable. The Employer will also, upon request, provide the Union all information or data required by law or regulation, for any required negotiations.

(b) The Employer agrees to furnish the Union with a copy of the A-76 schedule pertaining to reviews of commercial or industrial activities performed by unit employees. Should any of these schedules be revised, copies of the changes will be provided to the Union.

(c) The Union will be notified when A-76 bids pertaining to work performed by unit employees are solicited. Further, they will be notified of the bid opening time and location so that they might attend on official time.

(d) To the extent consistent with law, rule, and regulation in effect at the time the contracting official announces the results of any cost comparison concerning work performed by bargaining unit employees, the Union will be notified and

will be provided copies of the detailed analysis and releasable documentation.

(e) The Parties recognize that Circular A-76 currently:

(1) states that activities will not be contracted out solely to meet personnel ceilings or to avoid salary limitations; and

(2) provides that a contract under A-76 will grant those federal employees displaced by direct result of the contract the right of first refusal of employment openings created by the contractor; this applies only to job openings for which such displaced employees are qualified, and does not apply when such employees would otherwise be prohibited from such employment by the government post-employment conflict of interest standards.

The Parties agree that this subsection does not establish contractual rights independent of Circular A-76.

ARTICLE 12 UNION-MANAGEMENT PARTICIPATION DURING THE TERM OF THE AGREEMENT

Section 12.01 The Union and the Employer recognize that frank, open, and regular exchange of information and viewpoints between the Parties is essential to promote and maintain sound labor-management relations. To this end, both Parties agree to work cooperatively and productively to enhance that relationship, improve efficiency and effectiveness of Government, and promote positive employee-management relations. Accordingly, the Parties agree to discuss a wide range of matters of mutual concern, the administration of the Agreement, and general matters affecting working conditions of bargaining unit employees.

Section 12.02 National Labor-Management Forum

(a) The Employer agrees to meet every six (6) months with the President of the Council, or designee, and three (3) National Council representatives on issues of present and future concern relating to general labor-management relations. At least two (2) weeks prior to the meeting, the Union will notify the Employer of the names of the Council representatives who will attend the Forum. The Employer agrees to pay travel and per diem, as necessary, for the Council President, or designee referred to above, and two (2) National Council representatives, to attend these meetings.

(b) National Forum meetings may be rescheduled or canceled by mutual consent.

(c) Agenda items for such meetings will be submitted by both Parties two (2) weeks in advance of each meeting and will be in sufficient detail to permit the other Party to prepare for the conference. Agenda items are subject to change or additions by mutual consent.

Section 12.03 Local Labor-Management Forum

(a) The Employer agrees to meet every four (4) months with the Local President, or designee, and up to two (2) other Local Union officials on local issues of mutual present and future concern.

(b) Such Local Forum meetings may be rescheduled or canceled by mutual consent.

(c) Agenda items for such meetings will be submitted by both Parties three (3) weeks in advance of each meeting and will be in sufficient detail to permit the other Party to prepare for the conference. Agenda items are subject to change or additions by mutual consent. If agendas are not timely submitted, upon the request of either Party the meeting will be postponed.

Section 12.04 Union-Employer Consultation on Agreement Administration

(a) The Parties recognize that there are matters relating to the ongoing administration of the Agreement and day-to-day operations of mutual interest to both Parties which may become the subject of ongoing, frank, and open exchange of information and viewpoints but which do not require the Parties to bargain collectively.

(b) To this end, the National Collective Bargaining Official, or designee, and the Labor Relations Officer for the Department agree to meet with the Council President, or designee, and the Chief Steward every three (3) months to discuss such matters. Two of the four meetings each year shall be scheduled in conjunction with the National Labor-Management Forum meetings referred to in Section 12.02. The Employer agrees to pay travel and per diem, as necessary, for the Council President, or designee referred to above, and the Chief Steward, to attend these meetings.

(c) Agenda items for such meetings will be submitted by both Parties ten (10) work days in advance of each meeting and will be in sufficient detail to permit the other Party to prepare for the conference.

ARTICLE 13 UNION PARTICIPATION ON COMMITTEES

Section 13.01 The Employer recognizes and supports the concept, when appropriate, of joint labor-management committees not otherwise provided for in this Agreement, whose functions relate to conditions of employment for unit employees in the following areas:

(1) Training and Development

(2) Quality of Work Life

The Union shall be represented on either of these committees, when established, as provided for by this Article.

Section 13.02 The Union will designate to the Employer the name of its representative to each committee. The designated representative will receive reasonable official time, consistent with the provisions in Article 14, for his/her committee function. The Union will notify the Employer in writing of any changes in such designation.

Section 13.03 The Union representatives to committees will have the same status as other members of the committees, in accordance with the committee's assigned responsibilities. Union representatives will have the same voice in committee recommendations as do other duly appointed members.

Section 13.04 The Employer agrees to receive from the Union's internal committees written advisory information for consideration on matters affecting the conditions of employment in the bargaining unit in those areas where the Employer has not established committees.

Section 13.05 Committee actions shall in no way preclude or delay Union or employee actions taken regarding alleged violations of this Agreement, except as agreed by the Parties.

Section 13.06 The Employer agrees that the establishment of joint labor-management committees will not be used to circumvent the Employer's collective bargaining obligations.

ARTICLE 14 UNION REPRESENTATIVES AND OFFICIAL TIME

Section 14.01 (a) The provision for Union representatives, and the use of official time to perform representational activities as provided herein, are negotiated pursuant to the Federal Service Labor-Management Relations Statute.

(b) The Union shall use official time as provided herein reasonably and efficiently, and only to the extent that its assigned representational responsibilities necessitate. Union representatives and bargaining unit employees shall not perform any activity relating to internal Union business on official time.

Section 14.02 (a) As used in this Agreement, the term "Union representatives" means duly designated Union officers, and those Union-designated stewards and team/committee members, for whom official time is provided in this Agreement.

(b) As used in this Agreement, the term "special representative" means an individual who is designated by the Union in writing to be the representative of the Union, but who is not a "Union representative" as defined above. Special representatives shall not be entitled to official time or to travel and per diem, except as specifically provided in Section 14.04(g) of this Agreement. The Union shall provide the Labor Relations Officer, or designee, with reasonable advance written notice of its intention to designate a special representative.

Section 14.03 (a) Union stewards shall be designated on the following bases: At headquarters, one (1) steward shall be designated by the Union for every one hundred (100) employees or part thereof based on the number of on-board employees as of October 1 of each year. In regional offices with one hundred fifty-one (151) or more employees, one (1) steward shall be designated by the Union for every seventy-five (75) employees or part thereof based on the number of on-board employees as of October 1 of each year. In regional offices with one hundred fifty (150) or fewer employees, one (1) steward shall be designated by the Union for every fifty (50) employees or part thereof based on the number of on-board employees as of October 1 of each year.

(b) In addition to the stewards referred to in Section 14.03(a) and the officers referred to in Section 14.04, employees who

serve as Union representatives on joint labor-management committees, or on Employer teams or committees such as quality improvement teams, reinvention teams and the like, shall be granted official time for that purpose. The official time shall be governed by Sections 14.04(c) and 14.04(d), for headquarters and regional office employees, respectively. The quarterly allocations of official time in regional offices shall include Union representatives on committees, when those representatives are known or anticipated. Team/committee representatives who are not otherwise designated stewards under this Section, and are not officers named in Section 14.04, may use official time only for committee work, and not for other purposes listed in Section 14.05.

(c) The Union shall provide the Employer written notification of the name, room number and building, telephone number, organizational unit, and immediate supervisor of each Union representative within ten (10) work days of the effective date of this Agreement so that appropriate discussions can be held with these supervisors and managers.

(d) The Union shall also provide the Employer the same information in writing of any change in the list of Union representatives as soon as practicable (normally ten (10) work days) before the change becomes effective. When the change is a temporary one, the duration of the appointment shall also be indicated. Temporary changes shall not be utilized to increase the number of positions entitled to use official time, provided by this Article.

Section 14.04 (a) Union representatives, selected or appointed by the Union under the terms of this Article, shall be granted official time, when they would otherwise be in a duty status, in accordance with the terms of this Section, to carry out the representational activities specified in Sections 14.03(b) and 14.05.

(b) The Council President and Local 2607 President shall be released from duty for 100% official time. They shall not be required to seek release from their supervisors as provided in Section 14.06(b). However, they must submit time and attendance reports as provided by Article 40 and by Section 14.07 of this Agreement, and they shall conform to other Department policies regarding leave and other conditions of employment.

(c) The following Union representatives may use a reasonable amount of official time:

(1) The Chief Steward of the Council;

(2) Council officers located at headquarters;

(3) The Vice-President, Chief Steward, Secretary, and Treasurer of Local 2607; and

(4) Stewards located at headquarters, authorized in Section 14.03(a).

(d) One Full-Time Equivalent (FTE) of official time per year shall be granted to the Council for each regional office. The official time will be made available each year on the anniversary date of this Agreement, and there shall be no carry-over of unused time into succeeding years. The time will be allocated by the Council President, or designee, to the Local Union Presidents, in the amounts believed by the Council President to be necessary. However, the allocation of time shall not exceed one and one-half (1 1/2) FTE for any local in a year, unless specifically agreed to by the Council and the Employer. The Council President, or designee, shall notify the Labor Relations Officer annually, in writing, of the allocation of official time to regional offices. He/she may make up to three (3) modifications in this allocation each year, with notification in writing to the Labor Relations Officer. Additional modifications may be made if mutually agreed to by the Employer and the Council.

The Local President, or designee, shall, in turn, notify the Regional Personnel Representative, in writing, of the allocation of official time, on a quarterly basis, to the following regional Union representatives:

(1) The Local President, Vice-President, Secretary, Treasurer, and Chief Steward;

(2) Stewards authorized in Section 14.02(c); and

(3) Council officers located in regional offices.

Modifications of quarterly allocations may be made if mutually agreed to by the Employer and the Local.

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(e) If a Union Local has officers beyond those designated in this Section to receive official time, it may notify the Employer that it wishes to substitute those officers for an equivalent number of the steward positions to which it is entitled under Section 14.03(a).

(f) If there is more than one (1) Union representative reporting to the same supervisor, the Parties agree to work closely and constructively to reduce the impact of the multiple representatives on performance of the work of the unit. If issues are not satisfactorily resolved, reassignment may be appropriate.

(g) Special representatives referred to in Section 14.02(b) who are bargaining unit employees may use official time under the following circumstances:

(1) when the FSLMRS provides an entitlement to such time;

(2) when they are designated to represent the Union in negotiations with the Employer in accordance with Articles 8 or 9 of this Agreement they may use official time for preparation, not to exceed four (4) hours prior to the beginning of negotiations and two (2) additional hours for each additional day of negotiations.

A unit employee serving as a special representative shall be authorized travel and per diem only when designated as a Union negotiator eligible to receive travel payments under Article 8 of this Agreement.

Section 14.05 (a) Official time in the amounts specified in Section 14.04 may be used only by Union representatives identified in Section 14.04 for the following activities i: volving representation of the Union or bargaining unit employees:

(1) meeting with employees to discuss alleged grievances, and investigation of grievances;

(2) preparing for and attending grievance conferences, formal discussions, other meetings with management, and formal appeals or arbitration hearings;

(3) preparing and presenting replies to proposed disciplinary and adverse actions, unacceptable

performance actions, denials of within-grade increases, classification appeals, and statutory appeals;

(4) reviewing documents in connection with an activity specified in this section;

(5) travel necessary to conduct an activity specified in this section, with the understanding that travel expenses are not required to be paid by the Employer except where specifically provided in this Agreement;

(6) preparing for and attending meetings of joint labor-management committees established by this Agreement;

(7) preparing reports required to be submitted by the Union to the Department of Labor;

(8) preparing for and representing the Union or employees before the Federal Labor Relations Authority;

(9) preparing for and attending negotiations with the Employer in accordance with provisions of this Agreement;

(10) participating in Labor-Management partnership activities; and

(11) participating in alternative dispute resolution procedures as contained in Article 42.

(b) Other activities for which official time is permitted by the Statute may be proposed for addition to the above list by the Employer or the Union under the procedures contained in Article 8 of this Agreement.

Section 14.06 (a) An employee serving as a Union representative is responsible for performing both his/her duties as an employee and his/her duties as a Union representative. A Union representative shall, to the extent possible, schedule his/her absences so as not to compromise important work assignments or impede work. The supervisor shall, to the extent possible, schedule assignments, and inform Union representatives of assignments, in advance in order to reduce the likelihood of conflicting demands. The time spent in carrying out the

representational duties described in this Article may require some adjustment of a representative's workload if, in the judgment of the Employer, an adjustment is necessary and practicable.

Supervisors and Union representatives are encouraged to meet, periodically, to forecast official time use and to assess potential impact of official time on office workload.

(b) When a Union representative needs to be released from duty in order to use official time as authorized by this Agreement, he/she shall provide his/her immediate supervisor, prior to any release, a good faith estimate of the amount of time for which release is requested, shall indicate the destination, if any, and shall specify the representational category(ies) defined in Section 14.05. Based upon that information and work considerations, the supervisor and Union representative shall mutually agree upon the amount of official time which is reasonable and necessary. The representative shall also advise the supervisor when he/she returns to the work area from performing these activities, or when representational activities performed at the work area are completed. This does not require a Union representative to request prior release for brief, unexpected telephone calls received at the work area of the representative.

If, because of bona fide work considerations, the supervisor cannot accommodate the absence of the representative at the time and for the duration requested, the Union representative will be given time, if possible, to make alternative arrangements to carry out that representational activity. If the Union business is an emergency, the Union representative shall provide additional information to the supervisor to permit a better-informed decision about release.

(c) The Parties agree that discussions between employees and Union representatives, and other authorized representational work, should normally be held in designated Union space, or in other appropriate non-work areas, to avoid disrupting work.

In the event it is not possible to meet with employees in Union space or other non-work space, and a discussion of more than a few minutes involving matters specified in this Article is anticipated, the Union representative shall first request permission from the employee's immediate supervisor

before meeting with the employee. If, because of bona fide work considerations, the supervisor cannot release the employee as requested, the procedures in Article 6, Section 6.02(c) (Employee Rights and Responsibilities) of this Agreement shall apply.

Section 14.07 (a) Each Union representative shall submit to his/her supervisor a biweekly written report of the amount of official time that he/she has spent on Union activities covered by this Article, both at his/her work area and away, by completing the "official time" section of the time and attendance form. The representative shall submit the report by the last work day of each pay period, and shall provide an amended report if official time is used after submission of the time and attendance form. This report will provide, at a minimum, the information required by the Office of Personnel Management or other appropriate authorities, and any succeeding issuances. Following the effective date of this Agreement, the Parties shall review the existing report form to determine if any changes are needed, and shall, if necessary, negotiate those changes.

(b) The Labor Relations Officer shall, in the event of serious or repeated reporting delinquencies by a Union representative, contact the appropriate Union official regarding the matter. He/she shall discuss with the Union official the circumstances warranting remedial action before any such action is taken.

Section 14.08 (a) (1) In addition to time provided under Section 14.04, and if work conditions permit, the Employer shall grant official time for short periods of time, ordinarily not to exceed twenty-four (24) hours for each year this Agreement is in effect, to stewards and officers authorized to engage in representational activities to attend external training courses that relate directly to matters within the scope of the Statute and which are of mutual benefit to the Union and the Employer. New stewards and officers shall be granted up to forty (40) hours, rather than twenty-four (24) hours, in the first year they hold Union office.

(2) The Union shall submit all requests for official time for Union-sponsored training to the Labor Relations Officer, or designee, for the necessary administrative clearances and arrangement for supervisory approvals, at least ten (10) work days before the training date.

The Union shall submit a copy of the training agenda at the same time. This 10-day notice requirement may be waived by mutual agreement.

(3) The Union shall bear all costs associated with this training including any travel or attendant costs.

(b) The Union shall provide initial training in Agreement administration to Union representatives authorized to engage in representational activities within ninety (90) calendar days of their designation.

Section 14.09 Consistent with applicable laws, regulations, and Department policies, the Employer may grant leave without pay to a bargaining unit employee selected to serve in a full-time capacity as a national or district officer of the Union providing his/her absence does not unduly interrupt the mission of the office to which he/she is assigned. This type of leave may not be granted to more than one employee at a time.

ARTICLE 15 USE OF OFFICIAL FACILITIES

Section 15.01 The Employer agrees to provide appropriate meeting space for each Local and the Council to be used for Union meetings with employees during employees' non-duty status. Arrangements for regularly scheduled meeting space shall be agreed to by the Union and the Employer. If the space will not be used as scheduled by the Union, the Union shall notify the Employer as far in advance as possible. The Employer further agrees that to the extent practicable when such meeting space is scheduled for use by the Union the scheduled use shall not be changed.

Section 15.02

(a) The Employer agrees to provide the Union private space for the Council and for each Local for official use consistent with the Statute. The space shall not be the regularly assigned office for any individual.

(b) Within thirty (30) calendar days of the effective date of this Agreement, the Employer agrees to identify appropriate space which the Union may use for the conduct of official business as provided for in the Statute. The space shall consist of at least one hundred fifty (150) square feet, in total, for each Local in the regions, two hundred (200) square feet for the headquarters Local and one hundred fifty (150) square feet for the Council, unless otherwise mutually agreed upon.

(c) The Employer further agrees to provide the following furnishings and equipment for each location, unless otherwise agreed upon:

(1) one (1) file cabinet with a lock and key;

(2) one (1) conference table;

(3) six (6) side chairs;

(4) one (1) desk and one (1) chair;

(5) one (1) electric typewriter, but will provide a spare computer and printer, if available;

(6) one (1) telephone answering machine (if not already available); and

(7) one (1) telephone line and one (1) instrument for each Local, and two (2) telephone lines and two (2)

instruments for the Council location to be determined after consulting with the Council President.

(d) In instances of physical moves or budget limitations or other considerations which require changes or reductions and where, thereby, the Union may have to reduce the size of its space, furniture, and equipment, and/or change the location of its office, the Union will be notified in accordance with the provisions of Article 8 or 9, as applicable.

(e) The Council and each Local President will sign a receipt for all property provided for Union use and will accept accountability for such property. The Union further agrees to accept responsibility for care and protection of Government property in its custody in accordance with the Federal Property Manual regulations.

Section 15.03 (a) Union representatives shall be permitted reasonable use of telephones provided by the Employer along with the Department's internal mail system when necessary for conducting labor-management activities. Union use of penalty mail is permitted under this Agreement only for correspondence between the Union and the Employer. Union use of other forms of mail (e.g., Express Mail) or commercial delivery shall not be paid for by the Employer.

(b) The Council and each Local Union President will periodically verify that all Federal Telecommunications System (FTS) calls were for representational labor-management activities under the Statute.

(c) The Employer agrees to provide reasonable access to designated copying machines for representational business. Use of copiers shall be reasonable under the circumstances, and shall not substantially interfere with the conduct of official business.

(d) The Employer agrees to provide reasonable access to "FAX" machines for the transmission of documents from the Union to the Employer at a different location. Use of such machines shall be reasonable under the circumstances, and shall not substantially interfere with the conduct of official business.

(e) The Employer shall endeavor to deliver through the Departmental internal mail system unopened mail and

documents addressed or forwarded to the Union or a Union representative. These items must be clearly identified or marked "To Be Opened by Addressee Only."

Section 15.04 (a) The Employer agrees to provide the Union with a bulletin board for official Union materials in each building housing over fifty (50) Department employees. The Local President shall initial or otherwise clearly designate all materials posted in space set aside for the Union. The Union agrees that it will post materials only on official bulletin boards, and not on walls or other surfaces.

(b) The Union shall be included on appropriate communication and distribution lists maintained by the Employer, and shall routinely receive all appropriate Department documents related to conditions of employment.

(c) The Employer shall make available a current set of published Department directives affecting conditions of employment to the Union within thirty (30) calendar days of the effective date of this Agreement.

(d) A copy of Office of Personnel Management regulations will be maintained at the headquarters personnel office and in each regional office where a personnel office is maintained. Upon request the Employer shall make the regulations available to employees or the Union.

Section 15.05 The Employer agrees to provide the Union with signs to be displayed on bulletin boards referred to in Section 15.04(a) specifying the space set aside for the Union. To the extent practicable, the location of the Union office shall also be displayed on each official Department building directory.

ARTICLE 16 VOLUNTARY ALLOTMENTS FOR PAYMENT OF UNION DUES

Section 16.01 In accordance with the Federal Service Labor-Management Relations Statute (FSLMRS), the Union and the Employer agree that where an employee voluntarily agrees to authorize the payment of dues through payroll deductions, the following provisions of this Article will apply. No employee will be interfered with, restrained, unfairly treated, or coerced by the Union or the Employer in choosing to exercise or not to exercise the right to have Union dues voluntarily deducted from his/her salary.

Section 16.02 To be eligible to make a voluntary allotment for the payment of Union dues, an employee must:

(a) Be an employee in the unit covered by this Agreement;

(b) Be a member in good standing of the Union;

(c) Have a regular net salary, after other legal and required deductions, sufficient to cover the amount of the authorized allotment for dues;

(d) Have no other current allotment for the payment of dues to a labor organization; and

(e) Submit a written request to the Labor Relations Officer authorizing the deduction on SF-1187 ("Request and Authorization for Voluntary Allotment of Compensation for Payment of Labor Organization Dues").

Section 16.03 The Employer shall deduct dues only for those pay periods where the employee's net salary, after other legal and required deductions, is sufficient to cover the amount of the authorized allotment for dues.

Section 16.04 An employee may authorize an allotment of only those dues which are the regular and periodic dues required by the Union for that employee. Initiation fees, special assessments, back dues, fines, and similar items are not considered to be dues and shall not be deducted.

Section 16.05 The Employer shall withhold dues on a biweekly basis conforming to the regular pay period. The Employer may take up to ten (10) work days to process the SF-1187. The Employer shall thereupon begin to deduct dues as of the next complete biweekly pay period.

The Labor Relations Officer shall document the receipt of the SF-1187 in writing.

Section 16.06

(a) An allotment may not be revoked for one (1) year after the first deduction.

(b) A revocation shall be effective as of the first full pay period after the anniversary of the first deduction. To revoke an allotment, the employee shall obtain an SF-1188 ("Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Employee Organization Dues") from the Labor Relations Branch, or regional personnel office, as appropriate, and shall submit the SF-1188 to that office during the thirty (30) calendar day period beginning before the anniversary date of the first deduction.

(c) If the employee does not submit the SF-1188 during that thirty (30) calendar day period, his/her withholding allotment will be continued, and may not be revoked until the next anniversary date. An SF-1188 that is not received in a timely fashion will be returned to the employee with an explanation concerning the appropriate time for resubmission.

(d) The Labor Relations Officer shall notify the Union of the revocations submitted by its members no later than five (5) work days after receipt of the revocation.

Section 16.07

If exclusive recognition should cease to exist for the covered unit, all allotments shall be terminated. In addition, the Employer shall terminate an individual employee's allotment when:

(a) The employee ceases to be a member in good standing of the Union;

(b) The employee is reassigned, transferred, or otherwise excluded from the bargaining unit; or

(c) The employee is separated from the Department.

Section 16.08

Termination of allotments as required in Section 16.07(a) and (b) shall be effective on the first full pay period following receipt and necessary processing of the appropriate notice by the Labor Relations Officer. Terminations as required by Section 16.07(c) shall be effective as of the date of separation. However, when separation occurs during a pay period, the Employer shall withhold

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the allotment from the employee's salary for that pay period, subject to Section 16.03, above.

Section 16.09 It is the responsibility of the Union to:

(a) Provide SF-1187;

(b) Certify on the SF-1187 the amount of dues to be withheld each biweekly pay period;

(c) Certify to the Labor Relations Officer when there is a change in the amount of the Union dues (changes can be made only once every twelve (12) months);

(d) Promptly notify the Labor Relations Officer when an employee with an allotment ceases to be a member in good standing with the Union;

(e) Ensure that its members understand the conditions, procedures, and time limits which they must meet in order to voluntarily revoke dues allotments; and

(f) Promptly refund an erroneous remittance to the Employer.

The Union Treasurer or designee shall make the necessary certifications required by this Section for the Union.

Section 16.10 (a) It is the responsibility of the Employer to:

(1) forward to the appropriate Union official checks in payment of net dues in accordance with established accounts; and

(2) promptly send to the Union the balance due if it erroneously underpays a payment of net dues.

(b) If the Employer has not withheld dues from an employee in accordance with Section 16.05, the Employer shall forward to the Union the amount due. The Employer may recoup the amount of the overpayment from the employee, consistent with law, rule, regulation and Department policy. If the amount to be recouped exceeds the equivalent of dues allotments for three (3) pay periods, the Employer will provide to a current Department employee the option to repay the amount by payroll offset over a series of pay periods.

Section 16.11 The Labor Relations Officer shall send to the Council of Locals, and to Local 2607, a listing by pay period and by Principal Office, providing the following information:

(a) Names of members for whom deductions are made, and amounts;

(b) Total number of members for whom dues are withheld;

(c) Total amount withheld; and

(d) Net amount remitted.

The Employer shall make the programming changes to its payroll system needed to provide sorting by Principal Office within approximately ninety (90) calendar days after the effective date of this Agreement.

Section 16.12 If the Parties are negotiating a new Agreement at the time this Agreement would otherwise terminate, the dues withholding provisions contained in this Article shall be extended until a new Agreement is reached.

ARTICLE 17 MERIT STAFFING AND PROMOTIONS

Section 17.01 The Department recognizes and supports the goal of merit principles, consistent with applicable law, rules, regulations and Department policies. To further the goals of merit staffing principles and in recognition of the knowledge, skills, and experience possessed by its employees, the Department shall follow the procedures in this Article and the Department's Merit Promotion Plan, as amended by this Article, and provide qualified employees the opportunity to apply and receive first consideration when filling bargaining unit vacancies in the competitive service. To that end, the Employer agrees that it is in the best interest of the Department to:

(a) utilize the talents and skills of its employees to the extent possible;

(b) assist employees in improving their performance in accordance with Article 23 (Performance Appraisal); and

(c) encourage employees to develop their potential according to their capabilities through discussions with their supervisors, developmental assignments, and if appropriate, formal training opportunities as provided in Article 26 (Employee Development and Training).

Section 17.02 The provisions of this Article are applicable to the filling of competitive service positions within the bargaining unit.

Section 17.03 (a) If the area of consideration on a vacancy announcement is broader than the Department, the selecting official shall first interview and consider Department employees on the Certificate of Eligibles before considering outside candidates. The selecting official shall provide to the personnel office written documentation on the Certificate of Eligibles attesting that each highly qualified candidate on the Certificate of Eligibles from within the Department was interviewed and given fair and impartial consideration before the outside candidates were considered. The Union may review the documentation upon request.

(b) The Union will be provided a copy of any Education Department Certificate of Eligibles issued under the provisions of this Article for bargaining unit positions grades GS-4 and above, excluding open continuous vacancy announcements. Such copies will be provided to the

respective Local President in whose installation the vacancy occurs.

(c) The Employer agrees that, in keeping with the spirit and intent of this Article, it is necessary and appropriate to acquire and maintain pertinent information and data on merit promotion selections. Therefore, the Employer shall obtain relevant information regarding merit promotion selections and shall also compile data, indicate trends, and prepare analyses of merit promotion selections by principal offices in headquarters and the regions. The Employer, consistent with cost considerations, shall make special analyses of principal offices available to the Union upon request. The Council President and other Union officials, as appropriate, shall meet with the Director of Personnel periodically to review merit promotion information and to discuss with the Director of Personnel any concerns, problems, and suggestions that the Union may have for improvement.

Section 17.04 If the Employer has not made a selection pursuant to an announced vacancy within ninety (90) calendar days of posting, the Employer shall re-announce the vacancy before a competitive selection may be made, unless a different number of days is proposed by personnel office and mutually agreed to by the Parties.

Section 17.05 (a) The Employer shall, the day of the posting, provide a copy of the vacancy announcement to the Local Union President of the headquarters or regional office where the vacancy exists.

(b) Vacancies will be posted for at least five (5) work days when the area of consideration is Assistant Secretary, Regional Program Component, or a comparable unit and at least ten (10) work days when the area of consideration is larger.

(c) The Employer shall post vacancies for longer periods of time than specified in Section 17.05(b) when the personnel office determines that:

(1) the area of consideration warrants longer posting, or

(2) a longer time is necessary to insure adequate distribution time for employees to be notified of the vacancy and to file for it.

(d) If the area of consideration is broader than the Department, the Employer shall post or make available the vacancy

announcement within the Division or comparable organizational unit where the vacancy exists.

(e) The Employer shall include the following information in a vacancy announcement:

(1) title, series, grade, geographical and organizational location of the position,

(2) summary statement of duties,

(3) identification of job specifications,

(4) statement of any selective factors pertinent to the duties,

(5) weights, if used, assigned to categories for rating purposes,

(6) where additional information may be secured,

(7) where applications should be sent,

(8) closing date,

(9) whether more than one position may be filled from the announcement, and

(10) other pertinent information such as permanent or temporary position and full-time or part-time employment.

(f) When substantive information on a vacancy announcement is incorrectly stated so that it would affect employees who may apply for the vacancy, the vacancy shall be reannounced.

Section 17.06 If the Employer uses weights and selective factors they shall be job related. Factors, if used, will be applied fairly and equitably and like skills and experience shall be given like credit.

Section 17.07 An employee's accumulation of earned annual leave or sick leave shall not be a factor in rating.

Section 17.08 (a) The Employer shall convene rating panels for vacancies which have been announced in the bargaining unit in the competitive service when the personnel office needs the

collective judgment and expertise of subject matter specialists in rating candidates for a particular position. In addition, for vacancies in the bargaining unit, rating panels will be convened in headquarters at grades GS-13 through GS-15 and in the regions at grades GS-12 through GS-14 or professional positions which require specialized, practical knowledge of computer equipment, the natural sciences, statistics, economics, mathematics, or educational research and which use terminology usually understood only by subject matter specialists.

(b) The personnel office will maintain a pool of raters to serve on rating panels. The personnel office shall set times and dates of the panels and notify the panelists in a timely manner. There shall be no prohibited discrimination in the selection of panel members.

Section 17.09 The personnel office shall notify each employee that it has received his/her application. Subsequently, the personnel office shall notify each applicant whether or not he/she was selected for the vacancy.

Section 17.10 Following notice of non-selection, an employee considered and not selected shall receive, upon request, the following information from the personnel office:

(a) The group in which the employee was placed; and

(b) The qualification requirements, the evaluation and ranking factors used, and how these factors were applied to his/her qualifications in the rating process. This provision does not require nor permit the release of crediting plans consistent with applicable law.

Section 17.11 In accordance with the Privacy Act of 1974, the personnel office shall permit an employee who has not been rated highly qualified, or his/her representative, to post-audit sanitized individual records of those candidates rated highly qualified.

Section 17.12 The Employer is responsible for assuring that temporary promotions, details to higher graded positions or to positions with known promotion potential do not compromise the open competitive principles of the merit system or the principles of job evaluation. Therefore, the Employer is responsible for keeping such actions within the shortest time practicable and to secure necessary services through the use of appropriate personnel actions. Temporary promotions or details to higher graded positions or positions with

known promotion potential in the bargaining unit expected to last more than sixty (60) calendar days shall be made in accordance with the Department's Merit Promotion Plan. Employees detailed to higher graded positions for more than thirty (30) consecutive days shall be temporarily promoted to the higher grade effective the thirty-first (31st) day of the detail. Details during reorganizations and non-competitive details will be in accordance with the provisions of Article 10 (Reorganization Implementation Procedures) and Article 19 (Non-Competitive Reassignments and Details). When selecting employees for non-competitive temporary promotions and non-competitive details to higher graded positions and to positions with known promotion potential, the Employer will give careful consideration to qualifications, including abilities, skills, and work experiences of employees.

Section 17.13 The Employer shall take every reasonable action to insure that employees' promotions are effective on the date specified and to facilitate employees receiving their paychecks in a timely manner.

ARTICLE 18 CAREER LADDER

Section 18.01 Career Ladder. A career ladder is a series of positions of levels of increasing difficulty in the same line of work through which an employee may progress from the entrance level to the full performance level. An incumbent employee in a career ladder shall be provided, on request, copies of established higher graded position descriptions in that career ladder.

Section 18.02 The Employer recognizes the importance of providing grade-building experience to employees in a career ladder who are performing at least at a Fully Successful level, so that they can demonstrate their ability to perform work at the next higher level. If it is determined that there will not be enough work in the unit at the next performance level to provide grade-building experience to the employee, the supervisor will inform the employee and will explore opportunities for reassigning the employee.

Section 18.03

(a) When an employee enters on duty into a career ladder position, he/she will be provided a written statement concerning eligibility for promotion, including applicable time frames and the criteria contained in Section 18.04 of this Article.

(b) The Parties recognize that it is the responsibility of the Employer, alone, to determine the specific assignments or types of assignments which an employee must successfully perform to demonstrate the ability and readiness for promotion to the next higher level. These assignments should be consistent with the grade level and work requirements of the position to which promotion is sought.

Section 18.04 Incumbent employees in career ladder positions below the full performance level will be promoted to the next higher grade level when:

(a) The employee was initially selected through merit procedures, or a valid exception or exclusion to merit procedures;

(b) The employee has met the necessary time-in-grade and qualifications requirements;

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(c) The first line supervisor provides written certification that:

(1) The employee is performing at least at a Fully Successful level, has not received less than a "Fully Successful" rating on a critical element that is also critical to the performance at the next higher grade, and has demonstrated the ability and readiness to perform at the next higher level; and

(2) There is enough work in the unit at the next performance level for the employee to be promoted, and there is a continuing need for personnel at that grade level.

(d) Approvals and authorizations shall normally be provided, or disapprovals given, by the principal office within fifteen (15) work days of the supervisor's written certification.

(e) The personnel office shall normally review and approve or disapprove the promotion request within fifteen (15) work days after receipt. If the promotion is approved, it will normally be effected on the first pay period beginning after the date of approval.

(f) While the Employer may not deny or delay a promotion for arbitrary or capricious reasons, operational circumstances reasonably related to the promotion or position may delay or preclude the promotion of employees who otherwise meet the eligibility requirements. These circumstances may include, but are not limited to such situations as: upcoming reorganizations or reductions in force, anticipated changes in duties, missions or functions, or misconduct which has a bearing on readiness for promotion.

If the delay is related to misconduct, the employee shall be provided a written explanation of these circumstances upon request.

If the delay is due to circumstances other than misconduct, the Employer shall notify the Union in accordance with Article 8 of this Agreement, and shall negotiate with the Union concerning the substance, impact, and/or implementation of the delay, as may be appropriate under the Statute. The Employer may delay affected promotions pending completion of negotiations.

A promotion delayed under this subsection shall be processed and made effective promptly after resolution of the situation which led to the denial or delay of the promotion.

Section 18.05 If an employee has completed time-in-grade and qualifications requirements for a career ladder promotion, and the supervisor has not initiated action under Section 18.04(c), the employee may request a determination from the supervisor as to whether the supervisor is prepared to recommend promotion. The supervisor will inform the employee within thirty (30) calendar days after the employee has requested a determination of the action he/she intends to take.

(a) If the determination is to recommend a promotion, the supervisor shall promptly initiate the written certification required in Section 18.04(c) of this Article.

(b) If the determination is not to recommend a promotion, the supervisor will promptly communicate to the employee the reasons for non-promotion. If the employee requests, the reasons will be provided in writing. The employee may thereafter request a redetermination from the supervisor at 4-month intervals.

Nothing in this Section is intended to prevent a supervisor from submitting a promotion recommendation in the absence of an employee request.

ARTICLE 19 NON-COMPETITIVE REASSIGNMENTS AND DETAILS

Section 19.01 This Article applies to non-competitive reassignments or details of bargaining unit employees to positions in the bargaining unit. Reassignments and details which require competition and the procedures applicable to them are provided for in Article 17 (Merit Staffing and Promotions). All matters not specified in this Article relating to non-competitive details of employees shall be governed by Department policy.

Section 19.02

(a) Details are intended for meeting temporary needs of the Employer's work program when necessary services cannot be obtained by other desirable or practicable means. The Employer shall detail employees consistent with Office of Personnel Management regulations.

(b) The Employer shall provide any employee detailed for more than five (5) work days with a statement of duties or a functional statement and include an appropriate statement of performance expectations, normally before the detail begins. Where this is not practicable, the Employer shall give the employee a statement of duties or a functional statement within five (5) work days after the detail begins.

(c) For details of 120 calendar days or more, or for reassignments, the Employer will provide the employee with an appropriate performance plan as required by Department policies and Article 23 (Performance Appraisal). The performance plan shall be completed and presented to the employee within thirty (30) calendar days after the beginning of the detail or reassignment.

Section 19.03 For a detail which lasts between seven (7) and thirty (30) calendar days inclusive, the Employer shall provide the employee with a memorandum for his/her Official Personnel Folder (OPF).

Section 19.04 The Employer shall record a detail of more than thirty (30) calendar days on Standard Form 52 ("Request for Personnel Action"), as a permanent record in the employee's OPF.

Section 19.05 Notification to Employees

(a) The Employer agrees to (1) notify an employee of a reassignment or detail as far in advance of the effective date of the assignment as practicable, and (2) seriously and fairly

consider concerns (e.g., alternative work schedule, leave, child care arrangements) expressed by the employee with respect to the assignment in advance of the effective date, when that is possible.

(b) If an employee is to be reassigned within the same commuting area, he/she should be provided at least five (5) work days advance notification. If the reassignment is outside the commuting area, the employee will be given at least ten (10) work days advance notification.

(c) If an employee is to be detailed in excess of seven (7) calendar days, the Employer should provide at least three (3) work days advance notification.

(d) If, due to pressing work considerations, the Employer must detail an employee for a period in excess of seven (7) calendar days, or reassign an employee, on short notice or immediately, and the Employer is unable to provide the advance notification in this Article, the Employer shall explain these circumstances when notifying the employee of the assignment. If requested by the employee, the explanation shall be subsequently provided in writing.

Section 19.06 Employees detailed to higher graded positions for more than thirty (30) consecutive calendar days shall be temporarily promoted to the higher grade effective the thirty-first (31st) day of the detail.

ARTICLE 20 RELEASE DATES

Section 20.01 If an employee accepts an offer of employment from a Federal or other employer, he/she shall promptly inform his/her immediate supervisor.

Section 20.02 If the new position is in the Federal sector, the Employer shall give a release date which will not be later than two (2) weeks following the date of the initial release request by the new employer unless other mutually satisfactory arrangements are made.

ARTICLE 21 REDUCTION IN FORCE

Section 21.01 Purpose

This Article describes the procedures and arrangements for adversely affected employees that the Employer will follow in the event it determines to undertake a reduction in force (RIF) or transfer of function. It is intended to protect the interests of employees while allowing the Employer to exercise its rights and duties in carrying out the mission of the Department.

Section 21.02 Applicable Laws and Regulations

This Article is to be interpreted in conformance with any applicable government-wide regulations and Department policies in effect at the time of the reduction in force or transfer of function.

Section 21.03 Definitions

Definitions of terms used throughout this Article may be found in applicable government-wide regulations or Department policies.

Section 21.04 Alternate Methods

To eliminate or minimize adverse impact upon employees in a RIF, the Employer agrees to consider alternative methods, such as, but not limited to, attrition, reassignments or details which do not result in displacement, early-out retirement, and, to the extent feasible, curtailment of non-essential expenditures.

Section 21.05 Union Notification

(a) When it is determined that any of the actions stated in this Article are necessary, the Employer shall inform the Union in writing and provide the information described in this Section.

(b) Formal written notification shall be given to the Union at least twenty (20) work days in advance of any notice to employees.

(c) The Employer shall provide the Union with the following specific information concerning the proposed reduction in force actions:

(1) the reasons for the reduction in force or transfer of function;

(2) the approximate number, types, and geographic locations of positions affected;

(3) approximate date of the action; and

(4) copies of the proposed notices, when available.

(d) The Employer retains the right to reassign employees who are not affected by a proposed RIF action, and/or detail affected employees, prior to the issuance of the notice.

Section 21.06 Official Time for Representation

Union representatives who are employees of the Department shall be entitled to official time as provided for in Article 14 to assist employees affected by reduction in force actions. Such time shall include but not be limited to private consultation with employees, preparation and presentation for meetings, inquiries, appeals, grievances, review of retention registers or other RIF records, and other related aspects of employee assistance.

Section 21.07 Employee Notification

Employees who are adversely affected by actions stated in this Article (i.e., geographically transferred, demoted, or separated because of reduction in force) shall, as a minimum, be given notices in advance of the effective date, in accordance with the Office of Personnel Management (OPM) regulations. All such notices shall contain the information required by OPM regulations, in addition to that required by this Agreement.

Section 21.08 Employee Information

The Employer shall provide information needed by employees to understand the reduction in force and why they are affected. Specifically, the Employer shall:

(a) inform all employees as fully and as soon as possible of plans or requirements for reduction in force in accordance with applicable rules and regulations; and

(b) inform all employees of the extent of the affected competitive area, the regulations governing reduction in force and the kinds of assistance provided for affected employees.

Section 21.09 Employee Response to Notice

Upon receipt of a notice notifying the employee that he/she is offered a reassignment and/or release from competitive level, or any other RIF action described in this Agreement, in lieu of separation, the employee shall have a minimum of five (5) work days to accept or reject the offer in the notice.

Section 21.10 Employee Use of Official Time and Facilities

Employees who are identified for separation or change to a lower grade shall be entitled to a reasonable and necessary amount of time between the date of the notice and the effective date of separation or change in lower grade while otherwise in a duty status without charge to leave for:

(a) preparing, revising, and reproducing job resumes and/or job application forms;

(b) participating in employment interviews; and

(c) using the telephone to locate suitable Federal employment.

All such time is subject to workload considerations and supervisory approval.

Section 21.11 Displaced Employees

The Employer shall provide any employee to be separated by RIF with the appropriate information regarding unemployment benefits available to them.

Section 21.12 Out Placement Program

The Employer shall conduct a positive placement program to minimize the adverse impact on employees who are affected by the RIF. The placement program will include counseling for employees on job opportunities and alternatives available to affected employees.

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Section 21.13 Reassignment to a Different Geographic Area

When the Employer is not able to place an employee within the local commuting area and the employee accepts an offer of reassignment within the Department, in lieu of separation, which requires a move to another geographic area, such action will be considered to be in the best interest of the government. Providing all requirements are met, the employee's move shall be at government expense in accordance with applicable Department policies and GSA travel regulations.

Section 21.14 Personnel Files

The Union may review any bargaining unit employee's Official Personnel Folder (OPF) and Employee Performance File (EPF) at the employee's request if that employee reasonably believes that the information used to place him/her on the retention register is inaccurate, incomplete, or not in accordance with law, rule, regulation, and provisions of this Article.

Section 21.15 Records

The Employer will maintain all lists, records and information pertaining to the reduction in force in accordance with OPM regulations.

Section 21.16 Retention Register

The Employer shall certify the accuracy of all retention registers which are to be used to conduct a reduction in force. The Union may examine retention registers for the competitive area where the RIF is to take place, including any subsequent updated registers.

Section 21.17 Details

Employees on detail will not be released during a reduction in force from the position to which they are detailed but, rather, from their positions of record.

Section 21.18 Repromotion Rights of Affected Employees

Eligible employees will be entitled to repromotion priority in accordance with Department policy.

Section 21.19 Reemployment Priority List

The Employer will maintain a reemployment priority list, consistent with applicable regulation, for Group I and II employees who receive notices of separation from competitive positions.

Section 21.20 Transfer of Functions

(a) When a transfer of function results in a reduction in force, RIF procedures, as outlined in applicable law, regulations, and this Article, will be used.

(b) The Employer shall grant a reasonable amount of excused absence to employees to locate housing, to arrange for disposition of their current homes, and to make arrangements for other related matters in accordance with applicable regulations and Department policies when employees, during a transfer of function, are moved from one commuting area to another. Payment of moving costs shall be determined in accordance with applicable regulations, Department policies, and availability of funds for such purposes.

(c) In a transfer of function occurring between the Department and another Federal agency, the Employer shall provide an information copy of the contents of this Article, other related Articles, and any related Supplemental Agreements to the gaining agency.

ARTICLE 22 POSITION DESCRIPTIONS

Section 22.01 The Parties agree to the importance of ensuring the accuracy of an employee's position description since: (a) it is the continuing basis for the classification, grade, and pay of an employee; and (b) it also serves as a basis for the development of an employee's performance plan.

Section 22.02

(a) The Employer shall delineate in a position description, in accordance with applicable Office of Personnel Management classification standards, the kinds and range of duties that an employee may be expected to perform.

(b) The Employer will endeavor to make assignments of work to employees consistent with the range of duties and responsibilities in their official position descriptions.

(c) The Employer shall initiate action to change the position description in a timely manner if the recurring major duties and responsibilities identified in an employee's position description change.

Section 22.03 If the phrase "other related duties as assigned" is included in the position description, those duties should not constitute a major portion of the employee's time.

Section 22.04 If an employee concludes that his/her position description is no longer accurate, the employee shall discuss his/her concerns about the accuracy of the position description and its classification with the supervisor. Together the two shall make a good faith effort, if necessary with the assistance of a representative of the personnel office, to resolve the problem. If these efforts fail to resolve the matter, the employee may utilize the procedures in Article 42 of this Agreement.

ARTICLE 23 PERFORMANCE APPRAISAL

Section 23.01 Performance Appraisal System

(a) It is the policy of the Department that the performance appraisal system will, in conformance with 5 U.S.C. § 4302 and related Office of Personnel Management (OPM) rules and regulations:

(1) provide for periodic appraisals of job performance of employees;

(2) encourage employee participation in establishing performance standards; and

(3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

(b) The annual appraisal period for employees covered by this system will be October 1 through the following September 30. However, this does not prevent appraisal periods of shorter duration in accordance with OPM regulation and Department policy.

Section 23.02 Developing the Performance Appraisal Plan

(a) In developing the performance plan, the supervisor shall consider the requirements of the employee's position, including, as appropriate, the employee's position description and the actual duties and work situation of the employee.

(b) The supervisor shall encourage and facilitate employee participation in the development of critical and non-critical elements, and performance standards.

(c) Each employee shall be given a copy of his/her approved performance plan.

(d) Either the supervisor or the employee may propose modification of previously established performance elements, objectives, or standards for discussion during progress review sessions, or at other times. The supervisor is responsible for deciding whether or not to modify the employee's performance plan.

Section 23.03 Progress Reviews

(a) During the annual appraisal period the supervisor shall hold at least one (1) formal mid-point progress review. More frequent progress reviews shall be held if an employee's performance warrants it, as discussed in 23.03(b), below.

During progress reviews, discussions between the supervisor and employee may include:

(1) the employee's overall performance,

(2) performance achievements and problems,

(3) special assignments,

(4) training needs, and

(5) if needed, modification of the performance plan, in accordance with Section 23.02(d) of this Article.

(b) When the supervisor concludes that an employee's performance does not meet performance requirements for one or more elements, he/she shall meet with the employee to discuss ways to improve his/her performance. If the supervisor concludes that the employee's performance is Unacceptable, he/she shall be given one (1) progress review each quarter until performance reaches Minimally Satisfactory or until an opportunity period is initiated.

(c) If in a progress review, or at any time during the appraisal period, an employee is informed that his/her overall performance (1) is less than Fully Successful, and (2) may result in a performance-based or adverse action, the employee may request a separate meeting solely to discuss how the employee may improve his/her performance and/or what potential consequences may exist if the employee does not do so. The employee may ask for his/her Union representative to attend this meeting. If the employee elects to have a Union representative, he/she will provide the supervisor advance notification. In this meeting, the Parties may discuss such matters as the employee's performance elements and standards, the causes of the performance difficulties, what the employee must do to improve his/her

performance in order to be retained in the position, and strategies for resolving the problem.

(d) The supervisor and employee shall certify that the progress review was held by signing the performance form. Employees may also make job-related comments in the space provided on the performance appraisal plan.

Section 23.04 Annual Appraisal

(a) During the annual appraisal meeting the supervisor shall explain the basis for the rating and discuss this rating with the employee.

(b) In appraising an employee, the supervisor shall consider factors outside the employee's control which may have affected the performance of the employee (e.g., details, long term illnesses).

(c) In appraising an employee who is a Union representative, the supervisor shall consider the time required to fulfill labor-management representational functions established by the FSLMRS and this Agreement.

Section 23.05 Unacceptable Performance

If the supervisor concludes that an employee's performance has become unacceptable, he/she may prepare a notice of opportunity period for the employee to demonstrate an acceptable level of performance. It is understood that should an employee fail to successfully complete the designated opportunity period he/she may be reassigned or proposed for demotion or removal as deemed appropriate by the supervisor.

An employee whose performance is found to be unacceptable and for whom a reduction in grade or removal has been proposed is entitled to Union representation or other representation as provided for by law (5 U.S.C. §4303(b)(1)(B)) and this Agreement. If a supervisor determines to take a performance-based or adverse action for performance reasons such action will be done in accordance with the provisions of Article 41, law, OPM regulations, and Department policy.

Section 23.06 (a) Both Parties agree that the individual appraisal meetings, including conferences to develop appraisal plans, and

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progress reviews, are not intended for the purpose of discussing grievances, general personnel policies or practices, or conditions of employment, and are not intended to be investigatory in nature.

(b) Except to the extent provided in this subsection, and in Sections 23.03(c) and 23.05, the appraisal process is reserved for meetings between supervisors and employees.

(1) When more than one supervisor or manager participates in a progress review or appraisal meeting for a bargaining unit employee under the performance appraisal system, the employee may, upon request, be represented by a Union representative. The Union representative may participate to the same extent as any additional management representatives: that is, if an additional management representative participates in the meeting, the Union representative may participate; if an additional management representative acts only as an observer, the Union representative will also act in that capacity.

(2) A supervisor or other Employer representative may meet with more than one employee to develop or modify performance plans of general applicability within the work unit, or to discuss other issues regarding performance appraisal. In such meetings, the Union's right to representation shall be governed by the "formal discussion" provision of the Statute, as described in Section 7.05(c)(1) of this Agreement.

Section 23.07 Upon request an employee and/or his/her Union representative (with written authorization if unaccompanied by the employee) may review his/her Employee Performance File (EPF).

Section 23.08 The Employer and the Union agree it is important for supervisors and employees to know their responsibilities under the performance appraisal system. To this end, the Employer agrees to communicate (e.g., meetings, written guidance, or other appropriate activities), as necessary, with both supervisors and employees concerning the procedures of the Department's performance appraisal system. The Union will be notified of any scheduled training or briefings for bargaining unit employees and invited to attend.

ARTICLE 24 WITHIN-GRADE INCREASES

Section 24.01 The Employer shall grant or withhold within-grade increases in accordance with applicable law, Office of Personnel Management regulations, and Department personnel policies, including pertinent policies on performance appraisals.

Section 24.02 If through administrative error, oversight, or management's failure to carry out a ministerial act, and a favorable determination is subsequently given, the increase shall be retroactive to the date the increase would otherwise have been effective.

Section 24.03 The supervisor shall keep the employee informed as to whether his/her performance meets the standards for an acceptable level of competence at progress reviews prior to the end of the waiting period.

Section 24.04 Before informing an employee of a negative determination, the Employer shall ascertain the existence and accessibility of the performance appraisal and other documents supportive of that determination.

Section 24.05 If an employee files a request for reconsideration, it shall cite specifically the reason(s) for the reconsideration, and it shall be in writing. The requesting employee is also responsible for providing evidence to rebut the reason(s) on which the negative determination was based. The Employer shall establish a reconsideration file containing pertinent documents relating to the negative determination. The reconsideration decision may be grieved within five (5) work days, as provided by Article 42, Section 42.06(d) of this Agreement.

Section 24.06

(a) The employee's most recent performance appraisal is used to determine acceptable level of competence. The Employer also will consider the employee's performance in the interim between the issuance of the performance appraisal and the end of the waiting period.

(b) The Employer agrees that the notice of negative determination will not cite as reason for the determination, incidents or deficiencies that occurred before the start of, or subsequent to the end of, the waiting period. Neither will an employee, in disputing a negative determination, cite work performance not included in the waiting period under consideration.

ARTICLE 25 INCENTIVE AWARDS, QUALITY STEP INCREASES, AND EMPLOYEE SUGGESTIONS

Section 25.01 The Union and the Employer acknowledge the importance of equitably recognizing employees for quality contributions to the Department and its mission. The Parties agree that timely recognition and encouragement by the immediate supervisor of an employee's performance is an important incentive, increases employee job satisfaction, and contributes to the overall quality of work performance.

Section 25.02 The Employer shall maintain and publicize the Employee Suggestion Program and encourage employee participation.

Section 25.03 To the extent practicable, incentive awards, employee suggestions, and quality step increases shall be processed in a reasonable and timely manner.

ARTICLE 26 EMPLOYEE DEVELOPMENT AND TRAINING

Section 26.01 The Employer and the Union recognize that career development counseling is an effective means of assessing and guiding employee performance capabilities and utilization. The Employer agrees to offer career counseling to interested employees concerning training opportunities available to them, to the extent staffing, budget, organizational arrangements, and other resources permit. The Employer further agrees to inform employees about the availability of career counseling.

Section 26.02 The Employer and the Union recognize that each employee is responsible for applying reasonable time, effort, and initiative in increasing his/her potential through self-development and training.

Section 26.03 The Employer, to the extent staffing, budget, organizational arrangements, and other resources permit, shall seek to provide training and development for employees through on-the-job training and the use of internal and external formal training courses so they may develop and advance their individual capabilities.

Section 26.04 Supervisors shall discuss training needs with employees, as appropriate, during the performance appraisal sessions. Employees are encouraged to present reasonable suggestions concerning their training needs to their supervisors. It is the Employer's responsibility to decide if the training proposed is directly related to accomplishing the employee's job requirements and is necessary. The Employer shall consider requested training in accordance with applicable law. This includes consideration of other training requests which would result in better organizational or individual performance.

Section 26.05 To the extent staffing, budget, organizational arrangements, and other resources permit and when necessary, the Employer will develop plans to meet the training needs of reassigned employees. Such plans will address such concerns as the needs of the Employer, the proficiency required of the employee, and the time needed to achieve the purpose of the plan.

Section 26.06 The Employer shall make available to employees, to the extent staffing, budget, organizational arrangements, and other resources permit, timely information concerning training courses and programs of which it is informed, and which are known to be available from Government or non-Government sources. Nomination and

selection in training and career development programs and courses shall be made in a fair and impartial manner.

Section 26.07 As soon as possible before the start of training activities, the Employer shall notify employees, when applications are timely received, of whether or not their applications have been approved.

Section 26.08 Documentation of completed formal training shall be maintained by the Horace Mann Learning Center, operating personnel office, or the principal office of the employee.

ARTICLE 27 EQUAL EMPLOYMENT OPPORTUNITY

Section 27.01 Recognizing the spirit and intent of equal opportunity, the Employer and the Union agree to cooperate vigorously to eliminate any discrimination because of race, color, religion, sex, age, national origin, or disability.

Section 27.02 The Employer and the Union agree to cooperate and to continuously work toward eliminating prejudice or unlawful discrimination based on race, color, religion, sex, age, national origin, and disability from the Employer's personnel policies and practices, and working conditions. Disciplinary actions, where required by law or applicable regulations, will be taken against employees and supervisors who engage in discriminatory practices.

Section 27.03 The Employer and the Union recognize that sexual harassment adversely affects all employees. Sexual harassment, for purposes of this Article, is as defined in Equal Employment Opportunity Commission (EEOC) regulations.

Section 27.04

(a) The Employer and the Union agree to establish joint Equal Employment Opportunity (EE0) Advisory Committees in headquarters and each regional office. These committees will serve in an advisory capacity to the Employer on matters pertaining to the general improvement of equal employment opportunity, including opportunity for employees with disabilities, and affirmative action plans. All committees will include, when available and qualified, appropriate representation in terms of race, sex, national origin, and disability.

(b) The Headquarters EEO Advisory Committee will consist of twelve (12) members, six (6) appointed by the Union and six (6) by the Employer.

(c) The Regional Office EEO Advisory Committees will consist of six (6) members, three (3) appointed by the Union and three (3) by the Employer.

(d) In addition to members above, the headquarters committee will be chaired by the Director of the EEO Office. The regional committees will be chaired by the Secretary's Regional Representatives or designees.

Section 27.05 The EEO Officer will provide each joint committee with copies of the Employer's affirmative action plan as well as other appropriate reports on EEO matters.

Section 27.06 The primary purpose of an affirmative action plan is to produce realistic positive change within a prescribed period of time. All such plans will meet the requirements for development, implementation, and management review set forth by the Department and the EEOC. The Employer will consider measures relating to:

(a) Identification and utilization of the present skills of employees on the rolls, facilitation of movement through job restructuring techniques, establishment of trainee positions, and assurances that qualification requirements are realistic in terms of the job to be done;

(b) Opportunities for employees to enhance their skills, perform at their highest potential, and advance in accordance with their abilities, the availability of opportunities and efforts to provide such opportunities including programs of career counseling and planning, training and education, job analysis and redesign, and elimination of any unnecessary barriers to career development; and

(c) Approaches which encourage the understanding of the EEO program and support by supervisors and managers through practical training and advice, effective use of incentive systems, and evaluation of supervisory and managerial performance in the EEO area.

Section 27.07 In the administration of the Federal Equal Opportunity Recruitment Program, the Employer agrees to place special emphasis on internal recruitment.

Section 27.08 The Employer will publicize the availability of EEO counseling in each Department-occupied building through the use of posters, bulletin boards, and/or employee notices. All EEO counselors and officials will be identified by name, photograph, location, and office phone number. The Employer shall endeavor to keep this information current.

Section 27.09 The Employer agrees to distribute to employees a copy of the statutory EEO complaint procedure.

Section 27.10 An employee filing a complaint will be free from restraint, coercion, interference, reprisal, or discrimination and will have the right to be accompanied by a representative of his/her own choosing. The Union agrees to assist, when requested by the EEO Officer, in resolving complaints in compliance with applicable regulations. The Employer and the Union agree to cooperate promptly with appropriate requests from the EEO counselors.

Section 27.11 In scheduling overtime work, or in the approval of leave, the Employer will make reasonable accommodations to the needs of employees in the practice of their religious faiths.

ARTICLE 28 EMPLOYEES WITH DISABILITIES

Section 28.01 The Employer and the Union recognize that the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Act of 1974, require that the Federal Government take affirmative action to hire, place, and advance qualified individuals with disabilities and disabled veterans, respectively.

Section 28.02 The Employer and the Union agree to cooperate and to continuously work toward eliminating prejudice or unlawful discrimination against qualified individuals with disabilities, including disabled veterans, in personnel policies and practices and working conditions, and toward eliminating barriers to assure access to persons with disabilities.

Section 28.03 The Employer agrees to survey its physical facilities on a semi-annual basis to determine where modifications are required to meet the needs of individuals with disabilities. A report of the findings of such surveys and implementation actions will be provided to the appropriate Equal Employment Opportunity Advisory Committee. Every practicable effort will be made to meet such needs. Modifications to be considered may include, but not be limited to, raised graphic markings in and around elevators to accommodate visually impaired persons, access to telephonic devices to accommodate hearing impaired persons, and access to Department facilities to accommodate mobility impaired persons.

Section 28.04 The Employer agrees to distribute annually to employees information on procedures for employees with disabilities to identify themselves to the Employer and available information regarding working with employees with disabilities.

Section 28.05 The Employer shall endeavor to arrange assistance for visually impaired, hearing impaired, and mobility impaired persons to participate in meetings, classes, and in the field, and other activities that are necessary for them to perform their jobs.

Section 28.06 Emergency evacuation plans will include arrangements for employees with physical disabilities and will be developed by management with the participation of the Safety and Health Committee provided for in Article 34 (Safety and Health).

ARTICLE 29 EXCEPTED SERVICE

[**Reserved**. Because of recent statutory and other changes, the Parties have agreed to revise this article before printing it in the Collective Bargaining Agreement. Until the new article is completed, provisions of Article 28 of the former Collective Bargaining Agreement (effective May 23, 1983) will remain in effect, to the extent consistent with law, government-wide regulations, and memoranda of understanding concerning excepted service positions negotiated since May 23, 1993.]

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ARTICLE 30 PART-TIME AND TERM EMPLOYEES

The Employer and the Union agree that part-time and term employees are important and valuable resources who contribute to the successful accomplishment of the mission of the Department. In order to promote harmonious work relationships and to utilize effectively these employees, personnel policies and rules applicable to part-time or term employment should be fairly and consistently applied. The Parties recognize and agree that these employees, their supervisors, and managers should be informed of applicable personnel policies and rules and the conditions and limitations of such appointments. The Employer agrees to provide appropriate information about these matters to employees through the supervisor in a timely manner so that employees will understand the terms and conditions of their appointments.

ARTICLE 31 RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

Section 31.01 Definitions

For the purpose of this Article, and as defined in 5 U.S.C. §4701, the following definitions apply:

"Research program" means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

"Demonstration project" means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved federal personnel management.

Section 31.02 Notification to Union

The Department will notify the Union, as provided for in Article 8, if a decision is made to conduct a research program or demonstration project as provided for by 5 U.S.C., Chapter 47, and this Article, and which is applicable to bargaining unit employees. Such notification will be at an early enough date so as to insure that the requirements of Article 8 may be met. The Department will provide the Union, upon request, any relevant and necessary information, without cost, which is needed by the Union to exercise its bargaining responsibilities.

Section 31.03 Negotiation

Where required by the FSLMRS and this Agreement, the Union shall have the right to negotiate on research programs and demonstration projects provided for in 5 U.S.C., Chapter 47 after any agreement between the Department and the Office of Personnel Management is finalized.

Section 31.04 Evaluation

After implementation of the program, the Union will be kept informed of the progress on a continuing basis. Any official evaluation reports shall include a statement of the Union's position, which has been provided by the Union to the Employer in writing.

Section 31.05 Access to Data

The Parties agree that the Union shall be given access to data, as required by law and regulation, which is not otherwise provided for in this Article.

Section 31.06 Waivers

Any demonstration project shall be consistent with and may not amend or waive any provision of this Agreement, except by mutual consent of the Parties. The Union may request at its option to have such waivers or amendments in writing.

ARTICLE 32 OVERTIME

Section 32.01 All overtime pay and compensatory time shall be administered consistent with the applicable provisions of Title 5, United States Code, the Fair Labor Standards Act, other applicable laws, applicable Office of Personnel Management (OPM) regulations, decisions of the Comptroller General, and Department policy.

Section 32.02 Overtime work must be ordered or approved by an authorized Department official.

Section 32.03 Assignment to Overtime Work.

Whenever practicable:

(a) when the decision has been made to assign overtime work to bargaining unit employees, the supervisor shall distribute overtime work on an equitable basis to those qualified employees who are within the work unit performing the work; and

(b) the supervisor shall consider the use of qualified volunteers who are known to the supervisor at the time overtime is needed.

The Parties recognize that there will be circumstances where the nature of the task or project requires an individual with particular experience or skills, or who has been working on or is familiar with the task or project, and it would be impractical to have that overtime work performed by another employee.

Section 32.04 Notice. Before requiring an employee to perform overtime work, a supervisor shall give the employee such prior notice as is practicable under the circumstances. The Parties agree that two (2) days notice would be desirable. However, it is noted that a longer notice period may be required by OPM regulation or Department policy for regular overtime work.

Section 32.05 The supervisor shall give fair and serious consideration to any expressed concerns of an employee requesting to be excused from overtime work.

Section 32.06 This Article shall not be interpreted to limit the Employer's statutory rights applicable to the assignment of overtime.

Section 33.01 Physical Moves. The Parties agree to the following procedures and provisions to handle all physical moves.

(a) The Employer will notify the Union in writing of plans to move employees, except as provided in Section 33.01(b). This notice shall contain all of the following items of information that are available and relevant at the time of the notice:

(1) provision for providing the employees affected by the move with advance notification of the date upon which the move is scheduled;

(2) a space plan which is consistent with the special requirements of any employees with disabilities;

(3) provision for supplying boxes and other supplies to employees for the purpose of packing personal items and/or otherwise assisting in preparations for the move;

(4) appropriate arrangements, within its limits to do so, with the General Services Administration (GSA) or other authorities, for phone service, essential repairs, and maintenance;

(5) if necessary, information to employees on, and specific arrangements by which employees can obtain, personnel services or the services of the travel office in their new location;

(6) specific provision to assist employees with disabilities to the extent necessary and practicable in preparing for the move, making the move and adjusting to their new office environment;

(7) a statement that the space is or will be made safe for occupancy, prior to the move;

(8) provisions for a Union office as specified in Article 15, if affected.

(b) For moves of five (5) or fewer employees within the same building, the Employer will notify the Union, normally at

least five (5) work days before the move. If negotiations are required, they shall be conducted in accordance with Article 8 or 9. The pendency of negotiations will not prevent the Employer from effecting the move; however, unresolved issues shall be subject to continued negotiation even if the moves are effected.

The Employer will not use this subsection to circumvent the requirements of Section 33.01(a), by breaking up large moves into several small moves.

(c) The Employer shall notify the Union, as provided in Section 33.01(a) or 33.01(b), and shall negotiate in accordance with, and to the extent provided by, the provisions of Article 8 or 9, as applicable. Notice in this manner shall constitute sufficient notice under Article 8 or 9 of this Agreement.

(d) Notice and/or negotiation is not required for employee moves incident to details, reassignments or promotions, unless such moves result from implementation of a reorganization.

Section 33.02 Child Care. Any changes proposed by the Employer in existing child care arrangements shall be subject to the negotiation provisions of Articles 8 or 9, as applicable, and as may be required by those Articles.

Section 33.03 Parking. The Employer shall assign automobile parking spaces available for employee use in accordance with GSA regulations and Department policy.

ARTICLE 34 SAFETY AND HEALTH

Section 34.01

(a) The Employer and the Union shall cooperate in the continuing effort to eliminate safety and health hazards from the workplace. To achieve this there will be a joint Union-Management Safety and Health Committee in headquarters and in each region. These committees shall make recommendations to the appropriate authorities with regard to occupational safety and health and with respect to the abatement of causes of occupational accidents, injuries and illnesses, pursuant to the Occupational Safety and Health Act of 1970, 29 CFR Part 1960, and Executive Order 12196.

(b) Headquarters will have a Safety and Health Committee with six (6) members; three (3) will be appointed by the Union and three (3) will be appointed by the Employer.

Each region will have a three (3) member committee with one (1) appointed by the Union, one (1) appointed by the Employer, and one (1) additional member who is employed in a non-supervisory position in the Department, and who shall be acceptable to both Parties. The local Parties are encouraged to identify a person with knowledge of disability issues for this appointment.

(c) Bargaining unit members of the committees will be provided appropriate training in safety and health issues for effective committee participation.

(d) The committees will meet at least quarterly to review and discuss local issues on health and safety. Union representatives shall be granted official time in accordance with Article 14 of this Agreement.

Section 34.02

(a) At least one (1) Union member of the Headquarters Safety and Health Committee or the Union regional safety and health representative or their designee, as appropriate, shall be invited to accompany Department of Labor or Department of Education safety inspectors on all regularly scheduled tours and on the initial and final inspection related to any safety and health hazard at any Department location. The requirement will not prevent the Employer from taking timely action to identify or investigate hazardous conditions or to initiate abatement actions to eliminate identified hazards, as may be required by applicable law, rule, regulation, Department policy, and this Agreement.

(b) Members of the Headquarters Safety and Health Committee as well as regional safety representatives shall conduct joint annual inspections of their respective Department work sites and shall report their findings to the officials identified in the Department's Safety and Health Committees Directive.

Section 34.03 The Employer shall provide the Union with a copy of annual summary reports on occupational safety and health submitted to the Secretary of Labor in compliance with 29 C.F.R. 1960.

Section 34.04 Consistent with applicable law, rule, regulation, Department policy and this Agreement, the Employer shall not require an employee or group of employees to work under conditions which are determined by the Employer or by the Occupational Safety and Health Administration to be unsafe or unhealthy.

Section 34.05 The Employer shall continue to utilize the services of Public Health Service (PHS) or other health facilities as authorized by Office of Management and Budget Circular No. A-72, to provide the following services:

(a) emergency diagnosis and first treatment of injury or illness during working hours;

(b) employee health maintenance examinations (periodic physicals), eligibility for which shall be determined by such factors as: availability of PHS facilities, age, and date of last Employer-provided examination;

(c) treatments requested by private physicians (subject to approval by the PHS or other provider);

(d) preventive service including preventing and controlling health risks, health education programs, and specific disease screening examinations and immunizations; and

(e) referrals to private physicians based on preventive service findings.

The Employer may add to, delete, or modify the above services, for budgetary or other reasons, after notification to the Union and completion of bargaining obligations established by the Statute and this Agreement.

Section 34.06 (a) The Union and the Employer agree to work closely to encourage all employees to become aware of counseling,

training, and referral programs available for such conditions as alcoholism, drug abuse/dependency, and mental health problems. The Employer will provide employees with alcohol and drug abuse/dependency problems an opportunity to receive the appropriate services described in this section. The Employer agrees:

(1) to provide employees information on the Employee Assistance Program (EAP), and educational programs on various EAP topics;

(2) that an employee undergoing a prescribed program of treatment for such a condition which requires absence from work will be granted sick leave or other appropriate leave for this purpose in accordance with pertinent leave policies and the terms of this Agreement;

(3) that where an employee voluntarily requests professional counseling or treatment, the Employer/EAP counselor shall identify and discuss with the employee alternative arrangements, and assist the employee, through the provision of information, in selecting the most appropriate one. The Employer shall comply with confidentiality requirements established by law and regulation; and

(4) that where it is determined that an employee should or must seek professional counseling, the Employer will arrange for such counseling for the employee, by providing an EAP brochure and a telephone number, or by making the initial call to the EAP if requested by the employee. Should the employee fail to utilize such counseling as may be arranged by the Employer, the Employer will be relieved of any further responsibility for the provision of counseling services.

(b) If, before the implementation of disciplinary or adverse action, the Employer is informed by the employee that the conduct, behavior, or performance for which the action is proposed, is in fact the consequence of a substance abuse/dependency or mental condition, the Employer will comply with the appropriate laws, rules, regulations, Department policies, and Article 36 of this Agreement.

Section 34.07 The Employer shall post information on bulletin boards about employee benefits under the Federal Employees Compensation Act (FECA). When an employee is injured or develops an occupational disease when in duty status, the supervisor will refer the employee to the appropriate office for counseling on benefits under the FECA. The Employer will provide information on appropriate benefits and entitlements such as leave, salary, fringe benefits, hospitalization, disability benefits, retirement, and repurchase agreements.

ARTICLE 35 WORKERS COMPENSATION

Section 35.01 Information/Assistance

(a) The Employer agrees that when an employee suffers a job-related occupational disease/illness or traumatic injury in the performance of duties and reports it to his/her supervisor, the Employer will provide the injured employee with the following information as applicable:

(1) his/her rights to file for compensation benefits;

(2) the types of benefits available;

(3) the procedure for filing claims; and

(4) the availability of continuation of pay (COP) absence in lieu of sick or annual leave up to the limits established by law.

(b) An employee who has filed for compensation benefits will be provided, by the Employer, assistance and information on such options as provided by applicable laws, regulations, and Department policies.

Section 35.02 Employee Options

(a) An employee with a job-related traumatic injury or occupational disease/illness may request to use accrued sick or annual leave instead of leave without pay, pending approval or disapproval of his/her compensation claim.

(b) Employees shall have the option of buying back the leave used and having it reinstated to their account if their claim for compensation is approved consistent with applicable laws, regulations, and Department policies.

Section 35.03 Placement of Workers Compensation Claimants

(a) Where the employee requests and supports his/her request with the required medical information, the Employer will consider assigning the employee on a temporary basis to such duties it deems consistent with the employee's medical needs due to the compensable injury.

(b) Where the employee requests and supports his/her request with an approved Office of Workers Compensation Programs (OWCP) claim and appropriate medical information, the Employer will give due consideration in assigning the employee to duties it deems consistent with the employee's medical needs due to the compensable injury. Any such action made will be consistent with applicable laws, regulations, Department policies, and this Agreement.

(c) When an incapacitated employee who has been determined by OWCP to be recovered sufficiently that he/she is required or permitted to seek reemployment, management will consider the employee for appropriate employment as provided for by applicable laws, regulations, and Department policies.

ARTICLE 36 MEDICAL DETERMINATION

Section 36.01 This Article concerns the Department's implementation of Office of Personnel Management regulations concerning medical determination published in 5 C.F.R. Part 339 and as may be later amended. These provisions are to be applied consistent with applicable laws, regulations, Department policies, and provisions elsewhere in this Agreement.

Section 36.02 The Employer and the Union agree that the application of this Article, including management decisions made in applying this Article, shall be fair and equitable.

Section 36.03 Where the Employer believes that a medical condition exists and is causing unacceptable performance or misconduct, the Employer will provide, in any counseling memorandum or written warning, notice to the employee that he/she shall have the opportunity to raise a medical condition which may have contributed to the unacceptable performance or misconduct, and that the employee has a right to use the Employer's counseling service or may supply documentation of a medical condition which impacts on the conduct or performance discussed in the memorandum.

Section 36.04 If, pursuant to Section 36.03 of this Article, an employee raises a medical condition, he/she shall be given a reasonable time to supply medical documentation.

Section 36.05 If, after an absence, an employee fails to provide acceptable medical documentation but subsequently supplies the requested documentation (within a reasonable period of time specified by the supervisor) the Employer will retroactively approve the sick leave.

Section 36.06 (a) When the Employer orders or offers a medical examination, the Employer shall place the employee on excused absence without charge to leave for the time spent undergoing the examination.

(b) If an employee elects an examination by his/her physician, for the purpose of obtaining medical documentation, the employee may utilize sick leave, as provided by applicable regulations and this Agreement. In such cases, the employee shall bear the cost of the examination.

Section 36.07 When requesting medical documentation, the Employer will not make arbitrary distinctions between requests for extended sick leave, advanced sick leave and extended leave without pay (LWOP) for

medical reasons. In each case, the documentation requested shall be consistent with the definition of medical documentation in Section 36.09 of this Article. The Parties recognize that, where conditions differ, appropriate distinctions may be made.

Section 36.08 When an employee raises a medical condition and the Employer requires medical documentation from a physician or licensed practitioner, the employee may submit the documentation to his/her supervisor or to the Employee Relations Team (for headquarters employees) or the servicing regional personnel specialist (for regional employees). Medical documentation submitted by an employee shall be assessed, in accordance with applicable regulations, by appropriate personnel and under appropriate criteria.

Section 36.09 As used in this Article, the term "medical documentation" refers to the medical information described in 5 C.F.R. Part 339.102.

ARTICLE 37 OFFICIAL TRAVEL

Section 37.01 Consistent with law, regulation, decisions of the Comptroller General, and other applicable authorities, the Employer shall as far as practicable schedule the time to be spent by employees in travel status away from their official duty stations in such a way as to preclude them from being required to travel during their nonduty time. When travel outside the regularly scheduled work week is necessary, and the employee may not be compensated for the time, the official concerned shall record his/her reasons for ordering travel during nonduty hours, and shall, upon request, furnish a copy of the statement to the employee concerned.

Section 37.02 For employees whose compensation is governed by Title 5, United States Code, time in travel status away from the duty station is considered hours of work if it is within the days and hours of the regularly scheduled administrative work week or when it meets one of the following criteria:

(a) it involves the performance of work while traveling;

(b) it is incident to travel that involves the performance of work while traveling;

(c) it is carried out under arduous conditions; or

(d) it results from an event which could not be scheduled or controlled administratively.

Travel outside regularly scheduled duty hours (e.g., weekends) is not compensable through overtime pay or compensatory time unless such travel has been officially ordered and approved and meets one of the criteria cited above.

Compensation for time spent in travel status by employees whose compensation is controlled by the Fair Labor Standards Act shall be governed by that statute and its implementing regulations.

Section 37.03 The Employer agrees to reimburse employees for official out-of-town travel expenses up to the official per diem rate. The Employer further agrees to reimburse actual expense for travel to high cost areas, subject to the approval of appropriate officials in advance of travel and limitations imposed by law and regulation.

Section 37.04 It is understood that the responsibility for providing estimates of travel costs generally lies with the traveling employee, and that travel is subject to approval by appropriate management officials.

Section 37.05 The Employer will provide travel advances consistent with General Services Administration regulation and established policy, including policy which has been negotiated with the Union. The Employer agrees that changes in its travel policy may require mid-term negotiation with the Union as provided in Article 8 or 9 of this Agreement.

Section 37.06 Employees shall normally submit travel vouchers within seven (7) work days of completing travel. The Employer shall normally complete internal processing of a travel voucher and shall forward the voucher to the National Finance Center, or other designated processing office, within seven (7) work days of the date the employee submits an accurate, completed voucher. Questions or problems which arise during the course of processing shall be promptly referred to the employee for resolution; processing shall begin again when the issues are resolved.

ARTICLE 38 DIRECTED MEMBERSHIP

The Employer agrees to pay for membership dues in a professional association whenever such membership is required by the Employer. The Employer also agrees to pay the expenses for attendance at professional meetings for employees who are required to attend meetings by the Employer. The Parties recognize that certain types of membership dues, such as bar association dues, may not be paid, and that the Parties are bound by decisions of appropriate authorities, such as the Comptroller General or the courts.

ARTICLE 39 LEAVE POLICY

Section 39.01 General Leave Policy. The Union and the Employer recognize that equitable leave administration, and uniform compliance with the regulations, policies and procedures applicable to leave and its use, require that employees and supervisors be fully aware of the requirements these provisions impose. Supervisors and employees are responsible for being familiar with general leave provisions, policies, and procedures. Supervisors are also responsible for assisting employees in obtaining information or clarification of leave provisions that apply to such situations as voting, registration, jury duty, etc. Employees are responsible for requesting all leave from the appropriate leave approving officials in accordance with procedures and exercising responsibility and integrity in the use of leave.

The term "supervisors" as used in this Article, refers to either immediate supervisors or other designated leave approving officials, as appropriate.

Section 39.02 Annual Leave. It is agreed any employee has the right to take earned annual leave and that the supervisor has the right to approve the time at which leave may be taken, based on work requirements. In approving, disapproving, or canceling leave, supervisors will give consideration to the desires of an employee and the needs of the organization.

(a) Each employee who so desires shall be granted accrued annual leave to provide for an annual vacation for rest and recreation of normally no less than two (2) weeks duration. Supervisors and employees are encouraged to plan leave well in advance of summer and winter holiday periods, when many employees seek to use annual leave. It is the responsibility of supervisors to schedule leave among employees and to maintain a sufficient work force to accomplish the work of the unit. The supervisor shall respond to requests for annual leave within five (5) work days after receipt of a properly submitted SF-71 (Application for Leave). Failure to timely respond shall not constitute automatic approval of the leave. Should an employee's vacation request conflict with the request of another employee, every effort will be made to resolve the conflict on a voluntary basis. In the event this fails, conflicts will be resolved on the basis of seniority as determined by the service computation date.

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(b) Except for emergency leave as noted in this Section, employees shall schedule and obtain advance approval of the supervisor to use annual leave. If an employee requests annual leave on an emergency basis, the employee must make the request to the supervisor within one (1) hour after the supervisor's starting time, if possible, and state the reason(s) for the emergency request. In those rare instances, when this cannot be done, the employee shall, if possible, arrange for a second party to notify his/her supervisor to ensure that the supervisor has timely notification of the leave request. Such arrangements shall provide the supervisor with notification at the soonest possible time. If the employee has not left a telephone number at which he/she may be reached, the employee shall thereafter contact his/her supervisor at the earliest practicable opportunity to confirm the specific type and amounts of leave being requested and to obtain its approval/disapproval by the supervisor.

(c) If an employee's request for annual leave is denied, the supervisor shall state the reason(s) for the disapproval by notation on the SF-71 leave request, and initiate action to reschedule the annual leave, at the same time leave is denied.

Section 39.03 Sick Leave. Sick leave is for use when an employee is physically incapacitated to do his/her job, for related reasons (e.g., exposure to contagious disease that would endanger the health of coworkers, or for dental, optical, or medical examination or treatment), or for other reasons as may be provided by law or regulation (e.g., to care for family members, for family funerals, or for adoption). An employee must request sick leave in advance for dental, optical, or medical examination or treatment.

(a) If an employee is ill and unable to report for duty, he/she shall notify his/her supervisor within one (1) hour after the supervisor's starting time and request appropriate leave for approval/disapproval by the supervisor. When this cannot be done because the employee is incapacitated, the employee shall, if possible, arrange for a second party to notify the supervisor of the absence. If the employee has not left a telephone number at which he/she may be reached, the employee must, thereafter, contact the supervisor at the earliest opportunity to confirm the specific type and amounts of leave being requested and to obtain its approval/disapproval by the supervisor.

(b) In addition to the above requirements, if an employee anticipates that an incapacitating illness will require absence in excess of one (1) work day, the employee may also request approval for the approximate length of time he/she will need to be on leave and estimate when he/she will be able to return to duty. If the employee does not request and receive such approval, he/she is required to contact the supervisor and request leave on a daily basis. The employee will not be required to contact the supervisor and receive approval for use of sick leave on any day for which approval has been granted in advance. However, an employee must return to work, or receive approval for another type of leave, when he/she is no longer incapacitated for work, even if advance approval for sick leave has been granted. For absences in excess of four (4) workdays, a medical certificate and other supporting medical documentation as determined appropriate under law, Office of Personnel Management (OPM) regulations, Department policy, and this Agreement is required.

(c) If an employee's request for sick leave is denied, the supervisor shall state the reason(s) for the disapproval by notation on the SF-71 leave request at the same time leave is denied, and initiate action to reschedule the sick leave, if appropriate.

(d) If a supervisor believes that an employee has made improper use of sick leave, he/she will arrange a conference and discuss the problem. It is agreed that, after a notice in writing (which may be issued during the conference or at a later time), the Employer may require that future absences due to illness, regardless of the length of time, be supported by a medical certificate which clearly indicates that the employee was not able to work and the duration of the incapacity.

All such cases shall be reviewed not later than six (6) months from the date the restriction is imposed. If no further abuse is indicated, the restriction will be removed and the employee will be notified of the action. If the restriction is to be continued, the employee will be notified in writing and provided the reasons for the continuation.

This procedure shall not serve as a prerequisite to disciplinary action for improper use of sick leave.

Section 39.04 The appropriate leave approving official may grant advanced annual or sick leave in accordance with applicable law, OPM regulations, and Department policy. In making the decision on advanced sick leave, the supervisor may not consider any accrued annual leave of 120 hours or less. However, accrued annual leave in excess of 120 hours may be considered, along with other appropriate factors (e.g., the nature of the evidence, medical documentation, and the amount of leave requested).

Section 39.05 Leave Without Pay. Leave without pay (LWOP) is an approved, legitimate use of leave and should not be confused or used interchangeably with the term "absence without leave" (AWOL). The Employer may grant LWOP in accordance with applicable laws, regulations, and Department policy, and only if the employee requests it.

Section 39.06 Absence Without Leave. Any absence from duty that is neither requested, granted, nor approved according to the provisions of law, applicable regulation, and/or Department policy must be considered by the Employer to constitute an absence without leave. Upon notification of any charge to AWOL, an employee may request that some other type of leave be substituted for the AWOL. If otherwise lawful and circumstances warrant, the supervisor may grant an employee's request to substitute other leave charges for charges to AWOL. The appropriate/designated leave approving official is prohibited from unilaterally substituting another type of charge to an unauthorized absence unless an employee requests substitution.

Section 39.07 Parental Leave. Employees who are unable to work because of pregnancy, child-birth, or child care may be granted sick, annual, or other leave as discussed below, and in accordance with Title VII of the Civil Rights Act of 1964, as amended, OPM regulations, and Department policies.

Both female and male employees may be able to use annual leave, sick leave, leave without pay, or a combination of these for maternity reasons and/or for caring for a child, subject to law and regulation. Supervisors shall apply Department provisions, including applicable law and regulation, in determining which type(s) of leave may be used in particular situations.

Section 39.08 If there is a discrepancy between an employee's properly completed Alternative Work Schedule Certification Form and the time and attendance report completed by the timekeeper, the employee shall, if practicable, be given an opportunity to correct or reconcile the

discrepancy before submission of the report. If there is no completed SF-71, no leave charge of any kind shall be made on an employee's record without all reasonable efforts at prior notification to the employee of the charge and the reasons. Employees shall be given the opportunity to review and/or copy their time and attendance records as soon as possible after their request. The Parties agree that requests for copies shall be kept to a minimum, and that such requests shall be made only when there are problems and questions related to time and attendance.

Section 39.09

When a duty station is open, but inclement weather or other general emergency conditions affecting travel prevents a bargaining unit employee from getting to work on time, the employee's tardiness may be excused by the Employer without charge to leave when it can be determined that the employee made every effort to get to work on time. The criteria for making such a determination are: the distance between the employee's residence and place of work; the modes of transportation available; the efforts made by the employee to get to work; and the success of other employees traveling under similar circumstances in getting to work on time.

The provisions of this Section are not applicable in situations where there is general guidance concerning late arrival from the Office of Personnel Management, a Federal Executive Board, or other appropriate authority, which is adhered to by the Employer.

ARTICLE 40 ALTERNATIVE WORK SCHEDULES

Section 40.01 The Employer and the Union agree that alternative work schedules (AWS) can enhance the efficiency and the effectiveness with which the Employer and its employees fulfill the obligations of public service. The Parties also agree that employee participation in the setting of their individual work schedules consistent with work requirements can contribute to the improvement of employee morale, work performance, customer service, and productivity. These mutual benefits are contingent upon a shared sense of accountability and responsibility for the effective implementation and consistent administration of the following alternative work scheduling provisions according to their intent and their purpose. The Parties agree, therefore, that these provisions shall apply to all bargaining unit employees and shall be consistently administered and implemented according to their terms and conditions.

Section 40.02 The Parties emphasize that the flexibility provided by this Article will lead to increased needs for employees and supervisors to plan for the accomplishment of work, use of leave, and other aspects of the work relationship affected by these work schedules, and to communicate with each other regularly concerning these matters.

Section 40.03 For purposes of this Article, the following definitions apply:

Work hours - as used in this Article, synonymous with "duty hours"; that is, the time when an employee is expected to be on duty or on approved leave.

Work day - the period of time, including a one half-hour lunch break, during which an employee is normally scheduled to be at work. Work day requirements for each type of alternative work schedule may be found in Sections 40.07 and 40.08.

Work schedule - a schedule of eighty (80) hours, by pay period, which, except for employees on gliding schedules, shows an employee's regular reporting and departure times for each day in that pay period. A schedule may not include the earning or use of credit hours.

Core period - the period from 9:30 a.m. to 3:00 p.m. each work day, Monday through Friday, during which employees who are not on leave, on lunch break, or using credit hours, are on duty.

Overtime - excluding credit hours or hours in a compressed schedule, all hours which are actually worked in excess of eight (8) work hours in a day or forty (40) work hours in a week, and which are officially ordered and approved in advance by an authorized official of the Employer.

Temporary change - a temporary change(s) or adjustment(s) in the established regular work schedule of an employee which may be requested by either the supervisor or employee.

Work unit - the immediate work group under the supervision of a first-line supervisor.

Work week - the days, Monday through Friday, on which an employee is scheduled to work on his/her established work schedule.

Section 40.04 The AWS system contains four options: two flexible schedules (flexitour with credit hours, and gliding schedules with credit hours) and two compressed schedules (a 5-4-9 compressed schedule, and a 4-10 compressed schedule). The Parties recognize that not all options may be appropriate for the work situations of all organizations. However, the flexitour with credit hours option will be available for all bargaining unit employees.

If a supervisor concludes that a gliding or compressed schedule option is not appropriate for the work situation of his/her work unit, the supervisor shall notify the Union of this conclusion. The supervisor's decision shall be subject to the problem resolution and negotiated grievance procedures contained in Article 42 of this Agreement.

Section 40.05 Employees are responsible for:

(a) submitting proposed work schedules in accordance with Department requirements and the advance notice requirements and deadlines established in this Article;

(b) maintaining accurate personal time and attendance records and correctly recording the information as required in this Article each day; and

(c) attending any required training related to the implementation and administration of the AWS program.

Section 40.06 Establishing the Schedule

(a) Transition arrangements. Within thirty (30) calendar days of the effective date of this Agreement, each employee will submit to his/her first-line supervisor a first and second choice proposed work schedule in writing for approval. The supervisor will review the proposed schedules and notify the employees of approval/disapproval within two (2) weeks after receiving all proposed work schedules from the employees in the work unit. Employees may remain on schedules established under the prior Collective Bargaining Agreement during this period of transition. If an employee and supervisor are unable to agree on a schedule within sixty (60) calendar days of the effective date of this Agreement, the employee shall be placed on a flexitour with credit hours schedule pending any resolution of the matter sought by the employee under Article 42 of this Agreement. After sixty (60) calendar days from the effective date of this Agreement, any employee who has not requested a schedule under this Agreement shall be placed on an 8:00 a.m. - 4:30 p.m. schedule or on whatever standard hours are in use in the employee's organization.

(b) Each new employee shall propose a schedule as soon as practicable, and the supervisor shall normally respond within five (5) work days. Until the new schedule is approved, the employee shall be on an 8:00 a.m. - 4:30 p.m. schedule, or on whatever standard hours are in use in the employee's organization.

(c) In reviewing scheduling requests from employees, the supervisor will consider such things as (1) workload, (2) the work unit's ability to efficiently and effectively accomplish its functions, including service to both internal and external customers, (3) the needs of the unit's employees, and (4) the requirement to ensure cognizant supervision to the same extent it is required for overtime.

(d) The supervisor will provide the employee with a signed copy of the approved request, which becomes the employee's established work schedule.

Section 40.07 Flexible Schedules

(a) Flexitour with credit hours will allow employees to select from a range of starting times, and to earn and use credit hours.

(1) A biweekly work schedule under this option shall provide for work days, Monday through Friday, each week. Each work day shall be scheduled for 8 1/2 hours, including lunch break, beginning as early as 6:30 a.m. or as late as 9:30 a.m. Each work schedule must indicate reporting and departure times for each work day. Reporting times shall be established in quarter-hour increments (e.g., 8:00, 8:15, 8:30).

(2) An employee may report for work up to fifteen (15) minutes before or fifteen (15) minutes after his/her scheduled reporting time but in no event earlier than 6:30 a.m. or later than 9:30 a.m. The employee's scheduled departure time must be adjusted accordingly. Time not made up before the employee's departure that day may be charged either to the employee's accrued leave or AWOL as appropriate under applicable leave policies, including Article 39 of this Agreement.

In establishing a work schedule, a supervisor may exercise his/her judgment and provide prior approval for an employee to adjust his/her reporting and departure time an additional fifteen (15) minutes in order to provide for occasional situations in which unanticipated circumstances would otherwise require a formal change in reporting time on a particular day. In the event it is necessary for the supervisor to alter the prior approval for work-related reasons, the employee must be so notified.

(3) Employees and supervisors should also refer to Sections 40.03 and 40.09 for provisions applicable to flexitour schedules.

(b) Gliding schedules with credit hours will allow employees to vary their starting time on a daily basis, and to earn and use credit hours.

(1) An employee for whom a gliding schedule has been approved may vary his/her starting time on a daily basis within a band from 7:30 a.m. to 9:30 a.m. A biweekly work schedule under this option shall provide for work days, Monday through Friday, each week. Each work day shall be scheduled for 8 1/2 hours, including lunch break, and the employee may depart 8 1/2 hours after arrival. Because of the nature of this option, a work schedule will not indicate specific reporting and departure times for each work day; however, employees are required to report within the 7:30-9:30 a.m. flexible band each day.

(2) Employees on gliding schedules are asked to inform their supervisor of any anticipated change in their normal arrival time (i.e., to the extent known in advance).

(3) Employees and supervisors should also refer to Sections 40.03 and 40.09 for provisions applicable to gliding schedules.

(c) Credit hours.

(1) An employee may lengthen or shorten the scheduled 8 1/2 hour work day by earning or using credit hours. The term credit hours, as used in this Article, means any hours in excess of eight (8) work hours per day or forty (40) work hours per week (excluding lunch breaks) which the employee elects, and is approved to work, so as to reduce the length of a work day or work week. Credit hours may be used only after they have been earned.

(2) Credit hours must be earned on a scheduled work day (Monday-Friday, excluding holidays), and are subject to the following time limitations: for employees on Flexitour, credit hours may be worked either before or after the scheduled work day, and between the hours of 6:30 a.m. and 6:30 p.m.; for employees on gliding schedules, credit hours may be worked either at the beginning or end of the work day, and between the hours of 7:30 a.m. and 6:30 p.m.

(3) Credit hours are earned and used in fifteen (15) minute increments. No more than two (2) credit hours may be earned on any work day. Credit hours may not be included in an employee's biweekly work schedule, but supervisors and employees are encouraged to schedule both the earning and use of credit hours as far in advance as is feasible. An employee may not be required to work (earn) a credit hour, even if previously scheduled. The working of credit hours is completely voluntary. However, approval of working credit hours is contingent on work being available for the employee, normally regular duties of the employee's position.

(4) Supervisory approval is required before an employee can earn or use credit hours. A request to earn or use credit hours may not be denied arbitrarily by the supervisor. In emergency or unavoidable situations, credit hours may be approved as soon as possible after they have been worked. An SF-71 (Application for Leave) must be used when requesting to use earned credit hours.

(5) Up to twenty-four (24) credit hours may be accumulated by a full-time employee for carry-over from one biweekly pay period to succeeding biweekly pay periods. Supervisors and employees are jointly responsible for planning the earning and use of credit hours so as not to exceed this carry-over limit. Any credit hours accumulated in excess of these limits at the end of any pay period will be forfeited. Part-time employees may carry over up to 1/4 of the hours of their basic work schedule.

(6) Credit hours are not overtime hours and therefore employees shall not be entitled to additional pay or compensatory time for any credit hours worked. Overtime work will be compensated as provided for by applicable laws, regulations, and Department policy.

(7) Subject to law, regulation, Department policy and the terms and conditions of this Agreement, credit hours either alone or in combination with annual, sick or compensatory leave, or leave without pay, may be

used for a full 8-hour day of absence. An employee may not earn credit hours while in a non-duty status (e.g., on leave, on holidays, etc.)

(8) For employees transferring or separating from the Department, supervisors and employees should plan work schedules so that employees will use their accumulated credit hour balances before they leave.

Section 40.08 Compressed Schedules

(a) Two types of compressed schedules may be requested and approved: a "5-4-9" schedule in which an employee works eight (8) 9-hour days and one (1) 8-hour day within a ten (10) day pay period; and a "4-10" in which an employee works four (4) 10-hour days each week in a pay period. These are both fixed schedules, with set reporting times for each day, and no daily flexibility in arrival and departure times. Credit hours are not an option under these schedules.

(b) A biweekly work schedule under either of these options shall provide for the appropriate number of work days between Monday and Friday of each week. The schedule must indicate reporting and departure times for each work day. Reporting times will be established in quarter-hour increments (e.g., 8:00, 8:15, 8:30), with arrival no earlier than 6:30 a.m. Because night pay requirements apply to compressed schedules, and not to flexible schedules, departure may not be later than 6:00 p.m. Each work day must include a one-half hour lunch break (e.g., a work day for an employee on a 4-10 schedule shall be of 10 1/2 hours duration).

(c) A full day's leave or other absence shall be charged for the number of hours scheduled for work that day.

(d) Holidays.

(1) A full-time employee who is relieved or prevented from working on a holiday (or an "in lieu of" holiday) is entitled to pay for the number of hours he/she would have been scheduled to work that day.

(2) Holidays Falling On Nonworkdays.

(A) Mid-week Nonworkday. When a holiday falls on a Tuesday, Wednesday, or Thursday regular nonworkday of an employee, the workday immediately before that day is the legal public holiday for the employee.

(B) Three (3) Consecutive Nonworkdays. When an employee has three (3) consecutive nonworkdays off and a holiday falls on one (1) of these nonworkdays, the following rules apply in designating a workday as an "in lieu of" holiday. When the holiday falls on the employee's first nonworkday, the preceding workday is designated as the "in lieu of" holiday. When the holiday falls on the second or third nonworkday, the next workday is designated as the "in lieu of" holiday.

(C) Four (4) Consecutive Nonworkdays. When an employee has four (4) consecutive nonworkdays off and a holiday falls on one (1) of these nonworkdays, the following rules apply in designating a workday as an "in lieu of" holiday. When the holiday falls on the employee's first or second nonworkday, the preceding workday is designated as the "in lieu of" holiday. When the holiday falls on the third or fourth nonworkday, the next workday is designated as the "in lieu of" holiday.

(D) Five (5) Consecutive Nonworkdays. When an employee has five (5) consecutive nonworkdays off and a holiday falls on one (1) of these nonworkdays, the following rules apply in designating a workday as an "in lieu of" holiday. When the holiday falls on the employee's first or second nonworkday, the preceding workday is designated as the "in lieu of" holiday. When the holiday falls on the third, fourth or fifth nonworkday, the next workday is designated as the "in lieu of" holiday.

(E) Employees and supervisors should also refer to Sections 40.03 and 40.09 for provisions applicable to compressed schedules.

Section 40.09 General Requirements For All Types of Schedules

(a) All full-time work schedules for each pay period must total eighty (80) work hours. Employees working part-time schedules will establish similar schedules within the limits of their part-time appointments.

(b) Core times for all schedules shall be from 9:30 a.m.-3:00 p.m. Employees and their supervisors are to establish schedules to provide work hours during the core period. An employee's approved work schedule must be compatible with his/her duties and provide for the employee to be present during all core hours.

(c) Flexitour and compressed schedules will show arrival and departure times, which include a non-paid 1/2 hour lunch break. For example, a schedule for an employee on flexitour will show scheduled arrival and departure times 8 1/2 hours apart. Employees on gliding schedules will leave work 8 1/2 hours after arrival, unless they are working credit hours, on overtime, etc.

(d) Breaks, including lunch breaks, may not be substituted for regularly scheduled work periods in order to modify arrival or departure time.

(e) All schedules will be established for 6-month periods. The schedules will expire at the end of six (6) months, and the expiration will not be considered a change in schedule or termination of a schedule. The Parties intend that expiration will not require negotiation, nor compliance with the statutory criteria for Employer termination of AWS schedules.

(1) An employee may request a different schedule at the expiration of the current schedule. The supervisor shall consider the request in accordance with Section 40.06(c). A schedule approved by the supervisor will become effective on the first day of the next pay period or on the first day of a later pay period as specified in the employee's request and approved by the supervisor. Requests will be submitted by

employees in writing no later than the Tuesday before the beginning of the pay period in which the change is proposed to become effective. The supervisor must notify the employee of his/her decision no later than the Friday before the beginning of the pay period in which the change is proposed to become effective. If the requested schedule is approved, it shall become a new 6-month schedule.

(2) If the supervisor concludes he/she would not be able to renew a schedule, under the criteria provided in Section 40.06(c), the supervisor shall give the employee at least one month notice of that fact, and the employee shall be able to enter the problem resolution procedure described in Article 42, Section 42.05 as soon as the notice is received. If the supervisor's notice is not given by the end of the fifth month, the expiration date shall be extended so as to ensure the employee a month's notice. If an employee and supervisor are unable to agree on a schedule by the expiration date, the employee may be placed on a flexitour with credit hours schedule pending any resolution of the matter sought by the employee under Article 42 of this Agreement.

(3) Schedules for which no notice was given by the supervisor and no change was requested by the employee will be automatically renewed for another 6-month period.

(4) The supervisor shall use the same criteria as are used in establishing the schedule for deciding whether or not to renew a schedule, including any conduct or performance problems reasonably related to the existing schedule. The Parties will use the problem resolution procedure in Article 42, Section 42.05 of this Agreement if there are unresolved conflicts between schedules requested by different employees, or if an organization decides not to renew schedules for a significant number of employees.

(f) Deviation from the established work schedule should occur on an irregular or occasional basis. If deviation occurs frequently, consideration should be given to establishing a new schedule.

Section 40.10 Changing Schedules Before the Expiration Date

Once established under this Article, an employee's work schedule will remain in effect until its expiration date unless it is changed in accordance with procedures set forth in this Section.

(a) Supervisors and employees are asked to give each other as much notice as possible regarding changes in schedules.

(b) Changes by mutual agreement

"Temporary" changes. An employee or his/her supervisor may, by mutual agreement, make a temporary change in an employee's work schedule within a specific pay period without modification of the established work schedule provided that the requirement for eighty (80) work hours per pay period is met. Requests for temporary changes must normally be submitted at least one (1) day in advance.

"Permanent" changes. If circumstances warrant, schedules may be changed at any time by mutual agreement between the employee and the supervisor. The new schedule will have a 6-month duration.

(c) Employee-initiated changes

In addition to requesting new schedules upon expiration of a current schedule, employees may request changes in schedules when a "hardship" exists. Employees with hardships will receive special consideration for changes. The procedure used shall be the same procedure as used in Section 40.09(e)(1) of this Article. A schedule established under this paragraph shall become a new 6-month schedule.

(d) Supervisor-initiated changes

(1) Supervisors may have to temporarily change employees' compressed schedules or require change to another type of schedule to accommodate training, travel, pressing work needs, etc. Employees on gliding schedules and flexitour may have to make comparable, temporary changes in their actual reporting time(s).

The duration of a specific temporary change would be only as long as required by the situation, normally not to exceed two (2) pay periods. This temporary change procedure may not be used to avoid going through permanent change procedures when those are called for. Before requiring a change of this type, the supervisor, as soon as the need is known, shall communicate with the employee(s) to explain the change and the need for it. The Parties are required to explore alternatives to change, if workable.

(2) A supervisor may "permanently" change an employee's established work schedule by providing the employee with written notice no less than one (1) month before the effective date of the change.

In order for a supervisor to make a "permanent" change during the term of a schedule, the reason must be serious and constitute a hardship to the office. The duration of the change shall be for the remainder of the 6-month term of the employee's schedule.

The written notice of change must be signed by the employee's second-level supervisor. In the case of urgent need, a supervisor-initiated temporary change may be used in the interim.

(3) If an employee is promoted, reassigned or detailed from one position or work unit to another, he/she will have to apply for a new schedule. If the employee move is a directed reassignment, not at the employee's choice, the supervisor shall allow a reasonable time for transition if a new schedule is required.

Section 40.11 In seeking mutual agreement on schedules under this Article, supervisors and employees are jointly responsible for making good faith efforts to reach agreement, including the exploration of alternative schedules.

Section 40.12 Certifying Attendance And Leave

(a) All employees will record and certify to their attendance.

(b) (1) Biweekly certification forms will be distributed to each employee on or before the beginning of each pay

period. The employee must record actual arrival and departure times on this form daily.

(2) The employee also will record any leave used, any approved overtime worked, and any compensatory time or credit hours earned or used for each day of the pay period. Employees must attest to the accuracy of their forms by signing the form in the space provided. An employee's certification form shall be available and accessible for review by his/her supervisor.

(3) At the end of each pay period, the fully completed certification form will be transmitted to the timekeeper or supervisor, as directed. It is recognized that the supervisor has the authority to review these forms in connection with the preparation of payroll documents. Each employee is responsible for transmitting his/her certification form to the appropriate timekeeper or supervisor. Failure to do so may result in inaccurate or delayed payment of salary checks. If an employee is ill, on leave or travel, or otherwise unable to transmit the completed certification form, it is the responsibility of the employee to make arrangements with his/her supervisor to ensure that the certification form is transmitted to the timekeeper before timecards are completed. All certification forms are to be retained, consistent with Department records retention standards.

(c) Existing Flexible Schedule Certification Forms will be used until revised and updated by the Parties. The Parties recognize that continued use of the forms is undergoing review in the Department, and that the forms may eventually be replaced by another time accounting process.

Section 40.13 When in the judgment of a supervisor an employee has abused or otherwise not adhered to the provision(s) of this Article, the supervisor will arrange a conference with the employee to discuss the problem. The results of the conference will be confirmed in writing. If the conduct is repeated, the supervisor may revoke any or all AWS privileges provided for by this Article. In such instances, the supervisor will notify the employee in writing and specify a work schedule consistent with organizational needs and the period of time (not to exceed six (6) months) it will be in effect.

Section 40.14

(a) The Employer may periodically assess the impact of alternative work scheduling on such factors as:

(1) productivity of the Department;

(2) the level of services furnished to the public; and

(3) the cost of Department operations.

(b) The Employer may modify attendance and leave accounting procedures when assessment results, or other information, indicates that procedures in this Article do not assure record-keeping practices which conform to law, regulation, and General Accounting Office guidance and requirements.

ARTICLE 41 ACTIONS FOR MISCONDUCT OR UNACCEPTABLE PERFORMANCE

Section 41.01 The Employer shall take actions covered by this Article only for sufficient and just cause consistent with law, regulation, and Department policies. When an action is formally proposed, the following procedures, rights, and responsibilities apply.

Section 41.02 (a) Definitions

(1) As used in this Article, the term "Reprimand" means a written reprimand intended for inclusion in an employee's Official Personnel Folder (OPF).

(2) As used in this Article, the term "Adverse action" means a suspension regardless of duration, furlough for thirty (30) calendar days or less, reduction in grade or pay, or removal taken under the provisions of Chapter 75, Subchapters I and II of Title 5 United States Code.

(3) As used in this Article, the term "Performance-based Action" means a removal or demotion taken under the provisions of Chapter 43 of Title 5 United States Code.

(b) The provisions of this Article do not apply to:

(1) Reduction in grade actions caused by misclassification or by the issuance of new or revised position classification standards affecting employees covered by the grade and pay provisions of 5 C.F.R. Part 536;

(2) Terminations or suspensions of probationary, temporary, or excepted service employees except where appeal rights to the Merit Systems Protection Board exist under Chapter 75 or 43 of Title 5 United States Code; and

(3) Oral admonishments confirmed in writing, written admonishments, counseling memoranda, or other actions not intended for inclusion in an employee's OPF.

(4) Other actions excluded by law or regulation from coverage of the provisions referenced in Section 41.02(a).

Section 41.03 General Provisions

(a) An employee against whom a specific action is proposed under this Article, shall, thereafter, have the right to be represented by the Union or other representative at meetings scheduled between the Employer and the employee concerning the action.

(b) Copies of pertinent records and documents upon which the proposed action is based shall be available for review and copying by the employee, his/her representative, if any, or the Union.

(c) An employee who is seeking release from official duties to respond to a proposed reprimand, adverse action, or performance-based action in accordance with this Article, shall request release in advance from his/her supervisor. In considering the amount of time requested, and the timing of the release, the supervisor shall consider both the need of the employee to respond to the proposal, including any information provided by the employee with the request, and the need to accomplish the work of the office. The employee shall return to his/her official duties upon expiration of the time which has been approved. However, the employee may request additional time, and the supervisor shall consider the request.

Section 41.04 Reprimands

(a) Proposal

(1) If the Employer proposes a reprimand for inclusion in an employee's OPF, the Employer shall so state in writing.

(2) Any such proposed action shall specify the reason(s) why the action is proposed.

(b) Response

(1) An employee who receives a proposed reprimand may request, and the Employer shall provide, a reasonable amount of excused duty time during the five (5) work days following receipt of the proposal to prepare and present a response.

(2) The employee's response to the proposed reprimand may be oral or written or both. Oral or written responses shall be presented or delivered to the official proposing the action on or before the last day of the response period.

(3) If the employee or his/her representative, if any, requests a conference to respond to the proposal, the proposing official shall schedule a conference.

(4) The proposing official will carefully consider the employee's response(s), if any, before issuing a written decision sustaining, rejecting, or modifying the proposed reprimand.

(c) Decision

The written decision shall be issued by the proposing official at the earliest practicable date. It shall specify the reasons for the decision.

(d) Appeal

(1) If the decision sustains or modifies the proposal to issue a reprimand, the employee may appeal such action through the negotiated grievance procedure, or through such other procedure as may be applicable.

(2) If the negotiated grievance procedure is chosen, it shall be initiated by filing a completed grievance, together with a copy of the proposal, the decision, and the employee's written response, if any, with the next higher level line official as specified in Article 42, Section 42.06 (Employee Grievance Procedure) within five (5) work days of issuance of the decision. Rules applicable to grievances shall govern processing through that procedure.

Section 41.05 Adverse and Performance-based Actions

(a) Proposal

(1) If a written proposal is issued to an employee for an adverse or performance-based action as defined in Section 41.02(a)(2) or (3), the employee shall have ten (10) work days to prepare and present a response, unless an adverse action is proposed under the provisions of 5 United States Code §7513(b)(1).

(2) The proposed action must be in writing and specify the reasons why the action is proposed.

(b) Response

(1) An employee who receives such a written proposal may request, and the Employer shall provide, a reasonable amount of excused duty time during the ten (10) work days following receipt of the proposal to prepare and present a response.

(2) The response to the proposed action may be oral or written or both. Any oral or written response shall be presented or delivered to the designated deciding official on or before the last day of the response period. This official shall decide whether to sustain, reject, or modify the proposed action.

(3) The deciding official will carefully consider the employee's response, if any, before issuing his/her decision sustaining, rejecting, or modifying the proposed action. When necessary, the deciding official may require additional information or investigation to decide the issue. If the deciding official obtains additional information as a result of the investigation, he/she will provide the employee a copy of all such information he/she intends to rely on in making the written decision. The employee will be given an opportunity to provide a response prior to issuance of the written decision. This does not require the deciding official to provide information which is obtained in order to verify or controvert statements made by the employee in his/her defense.

(c) Decision

(1) A written decision by the deciding official shall be issued at the earliest practicable date, or as otherwise provided for by law, and shall specify the reasons for the decision.

(2) Employees and supervisors should also refer to Section 41.05(e) for provisions applicable to the effective date of decisions

(d) Appeal

(1) Suspension of fourteen (14) calendar days or less

(A) If the decision referred to in Section 41.05(c) is to suspend an employee for fourteen (14) calendar days or less, an employee may appeal the decision by filing with the appropriate management official under the Expedited Grievance Procedure described in Article 42, Section 42.07 of this Agreement, or through such other procedure as may be applicable.

(B) If the employee elects to grieve the decision he/she shall file a grievance together with a copy of the proposal, decision, and written response, if any, with the designated management official as outlined in Section 42.07 (Expedited Grievance Procedure) within five (5) work days of issuance of the decision. Rules applicable to grievances shall govern processing through that procedure.

(2) Other Adverse Or Performance-based Actions

(A) A decision which imposes a suspension for more than fourteen (14) calendar days, a furlough for thirty (30) calendar days or less, a reduction in grade or pay, or removal, may be appealed, at the employee's option, under the applicable statutory procedure or under the applicable negotiated grievance procedure (Article 42) but not both. (See Section 42.03 for the rules that apply to this election).

(B) In either event, applicable standards for both procedures shall be those established by law. Whichever procedure is elected, that procedure shall be the exclusive forum for resolution of all claims arising out of or related to the disputed action.

(e) Stays of Proposed Actions

(1) If the decision is to impose a removal or suspension for misconduct or unacceptable performance, and Section 41.06 of this Agreement is not applicable, the effective date of the action must be no sooner than the sixth (6th) work day after issuance of the decision. An additional five (5) calendar days must be added to this time if the decision is served only by mail.

(2) If the employee timely grieves the decision under the expedited grievance procedure, the effective date shall be stayed until the issuance of the grievance decision. The grievance decision shall set the new effective date, if applicable.

Section 41.06 In instances where public or employee health, safety, or welfare may be impaired or endangered, or there may be a serious breach of applicable standards of conduct, or it is necessary to invoke the "crime provision" of 5 United States Code §7513(b)(1), the Employer reserves the right to take appropriate action immediately and before the procedures set forth herein are initiated or exhausted.

NOTE: Procedures and time frames affecting Sections 42.05 and 42.06 have been amended by a Memorandum of Understanding which is reprinted at the end of this Agreement.

ARTICLE 42 GRIEVANCE PROCEDURE

Section 42.01 The purpose of this Article is to provide a mutually acceptable method for prompt and equitable settlement of grievances. The Employer and the Union state their commitment to the alternative dispute resolution procedures contained in Section 42.05 and agree that efforts will be made by management and the aggrieved party(ies) to resolve concerns at the lowest supervisory level.

Section 42.02 Coverage

(a) A grievance means any complaint:

(1) by any bargaining unit employee concerning any matter related to the employment of the employee;

(2) by the Union concerning any matter related to the employment of any employee; or

(3) by any employee, the Union, or the Employer concerning--

(A) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(B) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

(b) Grievances on the following matters are excluded by Statute:

(1) any claimed violations relating to prohibited political activities;

(2) retirement, life insurance, or health insurance;

(3) suspension, or removal for national security reasons;

(4) any examination, certification, or appointment;

(5) the classification of any position which does not result in the reduction in grade or pay of an employee;

(c) Grievances on the following matters are excluded by this Agreement:

(1) an oral warning, or written notice of proposed action;

(2) adverse personnel actions (as enumerated in section 7512 of Chapter 75 of Title 5, United States Code) taken against probationary, temporary, or excepted service employees except where appeal rights to the Merit Systems Protection Board exist under Chapter 75 or 43 of Title 5, United States Code;

(3) adjudication of claims the jurisdiction over which is reserved by statute and/or regulation to another agency, such as, but not limited to, Department of Labor determinations on workers compensation;

(4) outside activity requests under the Department's Standards of Conduct regulations as specified in the MOU effective March 2, 1989.

(d) EEO Grievances

A claim by an individual employee that discrimination against him/her has resulted from the Employer's actions or conduct may also be filed under this procedure by the employee, or by the Union on behalf of the employee. Actions or conduct which are the subject of more than one employee grievance shall be considered by the Employer for consolidated processing, and will be so consolidated when to do so would expedite resolution and the grievants agree. The foregoing reservation of this procedure for individual claims is not intended to waive any rights the Union or employees may have to raise broader kinds of EEO claims (e.g., class actions, pattern or practice claims, or claims attacking the general validity of the Employer's personnel policies or practices) under other procedures as may be provided by law.

Section 42.03 (a) (1) An employee who believes he/she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or disability may raise the matter under a statutory procedure or this negotiated procedure, but not both. An employee must use the procedure first invoked. This grievance

procedure is invoked when a timely written grievance is filed under either the Employee Grievance Procedure or Expedited Grievance Procedure of this Article, whichever is applicable.

(2) A grievant alleging discrimination must ensure that the grievance contains: a factual description of the action(s), event(s), or incident(s) alleged to be discriminatory, including the date on which it is alleged to have occurred; a statement that no EEO complaint has been filed regarding the action, event, or incident; the basis/bases of discrimination alleged to have occurred (i.e., race, color, religion, sex, national origin, age, or disability); and the names of officials or employees alleged to have participated in the alleged discrimination. The grievance must also contain any additional information specified in Section 42.04(d) to the extent it is not included in the above information.

(b) (1) A bargaining unit employee who appeals a suspension for more than fourteen (14) calendar days, a furlough for thirty (30) calendar days or less, a removal action, a reduction in grade based on unacceptable performance, or any other covered adverse action(s) (as enumerated in sections 7512 and 4303 of Title 5, United States Code) may, at the employee's option, raise the matter under the applicable statutory procedure or the expedited process of this negotiated grievance procedure, but not both.

(2) For purposes of this Section and pursuant to section 7121(e)(1) of the Statute, an employee exercises a nonrevocable, final choice under this Section when the employee or his/her representative files either a timely notice of appeal or complaint under the statutory procedure or a timely grievance in accordance with the provisions of Section 42.07 (Expedited Grievance procedure), whichever occurs first.

Section 42.04 General Provisions

(a) An employee presenting a grievance under Section 42.06 or 42.07 of this procedure may represent himself/herself or elect to be represented by a Union representative at the grievant's

location designated by the Local or Council to handle representational responsibilities under the procedures provided for in Article 14 (Union Representatives and Official Time). An employee may not be represented in the negotiated grievance procedure by anyone who has not either been properly designated under the provisions cited above, or in special circumstances an individual who is acting on behalf of the Union, with express written authority to so act in a specific negotiated grievance or arbitration and for whose acts and agreements the Union accepts full and unconditional responsibility.

The Union shall provide the Labor Relations Officer or his/her designee written notification of its intention to designate a special representative which includes the name of the individual and grievance or arbitration to be handled together with a copy of the authorization and acknowledgment of responsibility specified above five (5) work days prior to the time representational activities are to commence. Such a representative shall be subject to all applicable terms and conditions, policies, rules, and regulations including specifically those related to access to the premises and standards of conduct.

(b) (1) If an employee represents himself/herself, the grievance must be simultaneously filed with the appropriate management official and the Labor Relations Officer (headquarters) or the appropriate Regional Personnel Specialist.

(2) Upon receipt of the grievance form from an employee electing self-representation, the Employer will provide a copy of the grievance to the Union. The deciding official shall notify the Union of any grievance conference or other formal meeting with the Grievant concerning the grievance; and the Union may, at its option, be represented at any such meeting.

(3) With respect to any such grievances, the Union may present its views in writing in lieu of sending a representative. Any written Union position shall be made a part of the official grievance file and be considered by the deciding official.

(c) ED Grievance Forms will be used to present grievances. Grievants shall complete all sections of the form. The supervisor, manager, or Union official with whom the grievance is filed, or designee, shall sign for receipt and indicate the date received. Copies will be distributed to the Parties and other officials according to the instructions on the form.

(d) All grievances shall: state the factual basis of the grievance, providing sufficient information for the deciding official to understand the basis for the grievance and make an informed decision; cite the specific article(s) and section(s) of this Agreement, regulation, or law alleged to have been violated or misapplied, or any act giving rise to the grievance; and clearly specify the remedy sought. In addition, Employee Grievances under Section 42.06 of this Article must contain a copy of the certification described in Section 42.05(e). A deciding official who believes that the information provided in a timely filed written grievance does not meet the requirements of this paragraph may request clarification or additional information in writing from the grievant's Union representative, or from the grievant if there is no Union representative. The grievant or Union representative shall provide the missing information in writing within a reasonable time. Time frames shall be extended, as appropriate, for the completion of this process.

The grievance form and all other relevant documentary evidence and written responses offered, or introduced, including grievance decisions and any written clarifications, will be retained in the official grievance file. All disputes of grievability or arbitrability shall be referred to arbitration as a threshold issue.

(e) The deciding official shall provide reasonable advance notice to the Union of any grievance conference, or other formal discussion with the Grievant concerning the grievance. If the Grievant is represented by the Union, the deciding official shall normally make arrangements for any conference through the Union representative.

(f) A grievance decision shall state the reason(s) for the decision. When the Grievant is represented by the Union, the decision shall be presented to the Union, unless it is the last day of the response period and no Union representative is available to receive the decision. If this occurs, the deciding official may present the decision to the Grievant and provide a copy

to the Union. When the Grievant has elected self-representation, the deciding official will present the decision to the Grievant, and will provide a copy to the Union. The Union representative, or Grievant, to whom the decision is presented shall sign for receipt and indicate the date received.

If the Grievant or Union representative believes that a timely written decision does not clearly state the basis for the decision, he/she may request a clarification from the deciding official. The request must be made in writing within two (2) work days of receipt of the decision, and the clarification shall be provided in writing to the requestor within three (3) work days of receipt of the request.

(g) A supervisor or Union official to whom a grievance is presented for a decision under this procedure is responsible for issuing a timely decision or, under the provisions of Section 42.12, timely arranging for an extension of these time limits. If a grievance decision is not issued within the established or extended time frames the grievance and the relief shall be considered denied. The Union or Employer may then advance the grievance to arbitration.

(h) In the interest of providing a full and fair opportunity to resolve matters of concern raised under this Article, each party shall disclose all issues, concerns and information which it believes to have a bearing on the matter.

Section 42.05 Problem Resolution Procedure

The Parties have adopted this procedure in response to the call of Executive Order 12871 to utilize alternative dispute resolution (ADR) procedures in order to promote the consensual resolution of employment disputes. The Parties have agreed that utilization of this procedure is a prerequisite to filing an Employee Grievance under Section 42.06 of this Article, except as indicated in Section 42.05(j); however, this procedure is not itself a step in the grievance procedure.

(a) An employee with a concern on any matter covered by the Employee Grievance Procedure in Section 42.06 of this Article shall present it to the supervisor or manager who has made the decision, has taken or failed to take the action, or is otherwise responsible for the matter which concerns the employee. This must be done within ten (10) work days of the date of the incident giving rise to the concern, or of the

date the employee first becomes aware of the matter out of which the concern arises.

(b) The manager or supervisor involved shall consider the concern and inform the employee what action, if any, will be taken to resolve it.

(c) If the concern is not resolved to the employee's satisfaction within ten (10) work days after it is brought to the manager's or supervisor's attention, or within such amount of time mutually agreed to by the persons involved, the employee has five (5) work days to contact the Local Union, or the Labor Relations Officer or appropriate Regional Personnel Specialist, to initiate the Problem Resolution Procedure.

(d) Under this procedure, the Union Local President, or designee, and the Assistant Secretary or designee at headquarters, or the regional office head or designee in a regional office, shall serve as facilitators between the employee and the supervisor or manager to attempt to achieve a settlement or other mutually acceptable resolution of the matter. During this period, the Union and Employer facilitators shall attempt to bring both parties to resolution through mediation, rather than advocacy of a particular side in the matter. During this phase of the process, Labor Relations Branch and other personnel staff at headquarters, or Regional Personnel Specialists in the regions, will be available to serve as technical resources for all parties.

(e) Except as provided in Section 42.05(f), a period of fifteen (15) work days shall be reserved for problem resolution under this procedure. If after fifteen (15) work days from the date this process was initiated, or after such other time as may be agreeable to the employee, the Union, and the Employer, resolution of the matter has not been accomplished, the employee may file a grievance, within ten (10) work days from the expiration of that time period, under the Employee Grievance procedure in Section 42.06 of this Article. The Union and Employer facilitators shall immediately prepare a certification stating that this procedure was utilized and that time frames were met, or shall state their disagreements about such matters. This certification shall be considered by the deciding official if a grievance is filed, and shall be incorporated into the grievance file.

(f) The Union and Employer facilitators may jointly certify the Problem Resolution period closed before the conclusion of

the fifteen (15) work day period if they conclude that there is no prospect for resolution of the dispute through this process. In that event the grievance time frame will run for five (5) work days from the employee's receipt of the certification.

(g) All proposed settlements shall be provided to the Labor Relations Branch or appropriate Regional Personnel Specialist for review. This review shall be completed within ten (10) work days of receipt. No settlement may be effected that is not in conformance with applicable law, rule and regulation, the Collective Bargaining Agreement, and written policies of the Department of Education. If a proposed settlement may not be effected, the parties shall make a good faith effort to reach an alternative resolution prior to invoking the grievance procedure. The Grievant and the Employer shall agree upon a reasonable extension of time for this effort.

(h) Failure by an employee to adhere to this procedure or to meet its time frames will result in a grievance being considered untimely, or otherwise improperly, filed.

(i) In the case of performance appraisal ratings of record, this Problem Resolution Procedure shall replace the reconsideration procedure found in Personnel Manual Instruction (PMI) 430-2 as the mechanism for employees to seek reconsideration of ratings of record. An employee with a concern about a rating of record shall present it to the Approving Official.

(j) The Employer may not decline to participate in this Problem Resolution process on the ground that the matter is not covered by the Employee Grievance Procedure, unless the employee has raised the matter in another forum provided by law, rule or regulation (such as the statutory EEO procedure, the MSPB appeal procedure, before the Office of the Special Counsel, etc.). However, the use of this procedure in matters such as reprimands, adverse actions, performance-based actions, within-grade denials, and so forth, shall be optional and informal, and shall not affect the time frames and procedures already provided for those matters.

Section 42.06 Employee Grievances

(a) Within ten (10) work days from the expiration of the Problem Resolution Procedure described in Section 42.05, the employee and his/her Union representative, if any, may

present a grievance in writing to the supervisor of the Employer official described in Section 42.05(a). The grievance may contain only concerns raised during the Problem Resolution Procedure. However, no grievance under this Section may be filed at a level higher than an Assistant Secretary, or equivalent, at headquarters, or a regional component head, if the grievance originates in a regional office.

A grievance under this procedure may also be filed by the Union on behalf of an individual employee or a group of employees reporting to the same first-level supervisor. The Problem Resolution Procedure described in Section 42.05 shall be used before a grievance may be filed.

(b) Within five (5) work days after filing of the written grievance, and upon request by the employee or Union or deciding official, the designated official will schedule a grievance presentation conference with the employee and his/her representative. If no request is made within this time period, the meeting is considered waived and a decision will be issued on the record.

(c) A written decision will be issued within fifteen (15) work days after the conference, if one, or fifteen (15) work days from the filing of the grievance, if there is no conference.

(d) Grievances concerning denials of within-grade increases shall be filed within five (5) work days after receipt of a reconsideration decision. Grievances will be filed with the next higher level official above the reconsideration official.

(e) Grievances concerning reprimands shall be filed in accordance with Article 41, Section 41.04(d)(2), of this Agreement.

Section 42.07 Expedited Grievances

(a) Because of the special and serious impact on employees of adverse or other actions which impose (1) suspensions, removals, or reductions in grade based on unacceptable performance or conduct, (2) furloughs of thirty (30) calendar days or less, or (3) reduction in force (RIF), such decisions may be grieved by the employee or the Union by submitting a signed grievance and any supporting documentation within five (5) work days from receipt of the decision, with the next level official above the deciding official.

(b) The Employer will review the grievance and issue a decision based on the record within ten (10) work days. If the grievance is not resolved within the ten (10) day period, the Union may invoke arbitration within five (5) work days from the date the decision is issued by written notification to the Department's Labor Relations Officer (or designee). If no decision is issued within ten (10) work days or by any mutually agreed upon extended date, then the Union may invoke arbitration within twenty (20) work days from the date the grievance was filed. Arbitration shall be invoked in accordance with the provisions of Article 43, Section 43.07(b) of this Agreement. Expedited grievances for which arbitration is invoked will receive priority arbitration hearings dates, and take precedence over all other cases scheduled for arbitration, except a previously invoked expedited grievance.

Section 42.08 Local Union or Local Management Grievances

(a) A grievance involving the interpretation and/or the application of this Agreement or personnel policies or practices affecting a condition of employment of more than one (1) bargaining unit employee reporting to more than one supervisor in a single local Department installation constitutes a local Union or Management grievance.

(1) When the grievance involves employees in the same Department component (i.e., Principal Office), the grievance shall be transmitted by the Union to the next level supervisor above the Employer official whose actions have given rise to the grievance, or by the Employer to the Local Union President, as applicable. No Union grievance under this procedure may be filed at a level higher than an Assistant Secretary, or equivalent, at headquarters, or a regional component head, if the grievance originates in a regional office.

(2) In those instances where a grievance involves a number of employees in different components, but in a single installation, the grievance will be transmitted to the National CBO or Local Union President as appropriate. If it is a Union grievance, the National CBO will then designate an appropriate management official to decide the grievance, as necessary. Such grievances will be filed with the Labor Relations Officer (at headquarters) or the appropriate Regional Personnel Specialist who will accept the grievance on

behalf of the Employer and transmit it to the appropriate management official.

(b) Within the time frames provided in Section 42.06(a) the Union or Employer wishing to file a grievance under this provision shall transmit a completed ED Grievance Form together with attachments and pertinent materials to the appropriate individual as specified above.

(c) The Union or Employer may request a conference within five (5) work days from the filing date of the grievance. Within fifteen (15) work days after the date of the grievance meeting or teleconference, the responding Party shall issue a written response. If no meeting is requested within five (5) work days, the conference will be considered waived and within twenty (20) work days from the date of filing a decision shall be issued.

Section 42.09 National Grievances

(a) A grievance involving the interpretation and/or application of this Agreement or personnel policies or practices which affect a number of bargaining unit employees in more than one Department installation constitutes a National Grievance. The Council President or National Collective Bargaining Official (or designees) shall, within the time frames provided in Section 42.06(a), transmit the grievance in writing to either the National Collective Bargaining Official or Council President, as appropriate. However, if it is a Union grievance involving employees in a single Principal Office, the grievance shall be transmitted by the Union to the Assistant Secretary, or equivalent, having authority over the employees.

(b) The Party with whom the grievance is filed shall schedule a meeting or teleconference, if requested, to discuss the matter within ten (10) work days from the date the grievance is received.

(c) Within fifteen (15) work days after the date of the National Grievance meeting or teleconference, if requested, the responding Party shall issue a written response. If no meeting is requested then, within twenty (20) work days from the date of filing, a decision shall be issued.

Section 42.10 If the Union is dissatisfied with the decision in any of the grievance procedures described above, or the Employer is dissatisfied with a decision rendered by the Union under Sections 42.08 and 42.09,

the Union or Employer may refer the matter to arbitration as provided for in Article 43 (Arbitration) of this Agreement. Except for grievances under Section 42.07, the referral shall be made within twenty (20) work days from the date on which the disputed grievance decision is or should have been issued.

Section 42.11 Employees and their representatives involved in presentation and pursuit of grievances will be free from restraint, interference, coercion, discrimination or reprisal. Grievants will be granted reasonable and necessary official time to prepare and present their grievances, subject to approval by the supervisor. Employees must request release from his/her supervisor prior to using such time or leaving their work site. If the supervisor can not release him/her at the time requested, then the supervisor will give them the next earliest time for release without compromising the integrity and intent of this Article.

This section also applies to participation in the problem resolution and arbitration procedures of this Agreement.

Section 42.12 The time limits provided in this Article may, by mutual agreement be extended for good cause. Requests to extend transmitted to the other Party prior to the expiration of the time limit will normally be granted when circumstances or the nature of the grievance render adequate consideration of the issue within the specified time limits impractical. The Party requesting the additional time is responsible for formally requesting the extension of time through the appropriate Union or management official. Any such request shall specify the reasons an extension is needed and the additional time requested. A request which is made in writing, and is received prior to the expiration of the time limit, shall operate as an interim extension pending receipt of a formal written response to the request. Copies of any such agreement will be forwarded to all parties to the grievance and the request and response shall be made part of the official grievance file.

Section 42.13 All grievance decisions will be non-precedential, except those issued under Section 42.09, National Grievances, or as mutually agreed upon.

Section 42.14 The Parties agree to evaluate the Problem Resolution Procedure contained in this Article after it has been in operation for nine (9) months. As evidence of their commitment to alternative dispute resolution, they agree to consider other methods during the term of this Agreement, as appropriate.

ARTICLE 43 ARBITRATION

Section 43.01 The Parties agree that their interests and those of the employees are served by providing economical and expeditious arbitration procedures to resolve promptly and finally disputes which other good faith means have failed to resolve. The Union and the Employer therefore establish the following arbitration procedures applicable to the resolution of the disputes described below.

Section 43.02 Designation of Arbitrator

(a) The Parties agree to the following procedures to designate arbitrators to be used for all disputes properly referred by either Party for disposition under the provisions of this Article.

(b) A permanent three (3) member arbitration panel will be established. Members of the panel in existence on the effective date of this Agreement will continue unless they resign or are removed in accordance with Section 43.02(d) of this Article.

(c) Each panel member will be assigned cases on a rotating basis according to the order of appointment of panel members and the date arbitration is invoked. One panel member will be assigned to hear each case.

(d) Each Party may strike one (1) arbitrator from the panel during each year following the effective date of this Agreement, by giving written notice to the other Party, and subsequently to the arbitrator. Upon receipt of the notice, no further cases will be assigned to that arbitrator. However, the arbitrator will hear and decide any cases already assigned to him/her. Any arbitrator may be removed from the panel at any time by mutual agreement of the Parties.

(e) In replacing arbitrators or filling vacancies on the Panel, the Parties will request at least seven (7) names from the Federal Mediation and Conciliation Service (FMCS) for each vacancy. The Parties will then alternately, as determined by a coin flip, strike names from each list until the requisite number of name(s) remain to fill the vacancies, unless a mutually agreed upon selection is made to fill the vacancy.

Section 43.03 It is agreed and understood that arbitrators selected by the Parties shall have no power to add to, subtract from, or modify the terms and conditions of this Agreement. In making awards, the designated

arbitrators shall be bound to apply, as necessary, the provisions of law and the standards for review provided in the Statute, other applicable provisions of Title 5, United States Code, and this Agreement, including applicable decisions of administrative authorities to which the Parties are subject by law, such as the Federal Labor Relations Authority (FLRA), the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the Comptroller General of the United States, the General Services Administration, as well as the United States courts.

Section 43.04 Where the Arbitrator's award is binding on the Parties thereto, the Employer and the Union retain their rights to file exceptions to an award with the FLRA, EEOC, or MSPB pursuant to their respective regulations, or with the Federal Courts as provided by law.

Section 43.05 The Arbitrator's fees and expenses, including the cost of any transcript, shall be borne by the Party whose principal contention is rejected by the Arbitrator. The Arbitrator shall determine whose principal contentions are rejected in every award issued under the provisions of this Article. However, when the grievance is granted in part, and denied in part, the Arbitrator shall split the fee proportionally.

In the event the Parties mutually agree to postpone, delay and/or cancel an arbitration proceeding, the Parties shall share equally any fees charged by the Arbitrator for such cancellation. In the event there is no mutual agreement, the Party who postpones, delays, or cancels the hearing shall pay all fees charged.

Section 43.06 The Arbitrator may disqualify himself/herself in any matter referred which in his/her judgment would constitute a real or potential conflict of interest. In such cases the Arbitrator shall so notify the Parties and explain the nature of the conflict. In the event of any disqualification the next Panel member in the order of rotation shall be selected.

Section 43.07 Arbitration Procedures

(a) As set forth in this Agreement, an unfavorable grievance decision may be referred by either Party to arbitration. The right to invoke arbitration is limited to the Union and the Employer; an employee may not independently invoke any of the provisions of this Article.

(b) A Party invoking arbitration shall notify the other Party of its intention to invoke the provisions of this Article. Such

notification shall be in writing and include a copy of the grievance being arbitrated, and the decision, if any. The notice shall also designate the name of the representative of the moving Party. Notification by either Party of its invocation of arbitration will be served by certified mail or hand delivered within twenty (20) work days to the other Party specified below, except as provided under the Expedited Grievance procedure in Article 42. If the notification is served by certified mail, the moving Party is responsible to ensure that the date of service is established by postmark and/or certified mail receipt stamped with the mailing date by the U.S. Postal Service. Notification shall be made in accordance with the following:

(1) for the Union: To the Department's Labor Relations Officer (or designee) and

(2) for the Employer: To the Council's National Chief Steward (or designee).

(c) The moving Party shall meet with the other Party, in person or by teleconference, no later than ten (10) work days after receipt of the invocation of arbitration or on some other date which is mutually acceptable. At this meeting the Parties shall attempt to agree on a submission agreement which shall include a statement of the issue to be referred and, as appropriate, the procedures and the manner of presentation to be followed. In the event the Parties cannot agree on the issue submitted or the procedures, each shall formulate its own version. Thereafter, the Parties may meet jointly with the designated Arbitrator to attempt to resolve procedural differences and, where possible, execute a submission agreement reflecting any such understanding(s) reached. Any stipulations agreed to shall be signed by the Parties and attached to the submission agreement, which upon completion shall be delivered to the Arbitrator prior to the hearing.

(d) Each Party shall be responsible for securing its respective witnesses. Union witnesses who are Department employees shall be granted a reasonable amount of official time for purposes of preparation for and testifying at the hearing. A written list of each Party's prospective witnesses shall be exchanged at least ten (10) work days prior to the hearing date or other mutually agreed date. Changes or additions to either Party's witness list shall be given to the other Party at least two (2) work days in advance. Rebuttal witnesses will

not be required to be listed. The Arbitrator shall give due consideration to the Parties' expressed interest in the prompt and efficient resolution of disputes. Location, dates, and time limits applicable to arbitrations shall be mutually agreed upon by the Parties and the selected Arbitrator. In the event the Parties cannot decide, the Arbitrator may decide these issues.

(e) The Arbitrator shall issue his/her award promptly and normally no later than thirty (30) calendar days after the conclusion of the hearing or after the final date for the filing of post-hearing briefs, if any. Normally the award shall be issued in summary form. However, in those instances where issues of significance or first impression are involved, the Arbitrator shall, at the request of either Party, issue a full written opinion.

(f) The decision of the Arbitrator with respect to the procedures and/or the form of the grievance presentation shall be final and binding on the Parties.

(g) The Arbitrator may, for good cause, upon written request by either Party, extend any time limits.

(h) The failure of the moving Party to:

(1) adhere to the time requirements of this Article, and/or

(2) expeditiously pursue the arbitration procedures after stating the intent to arbitrate,

may be deemed by the Arbitrator to mean that the Party has abandoned the action. Any such decision shall foreclose further processing of the arbitration.

(i) If either party requests a transcript be made of the proceedings, the Arbitrator shall arrange for transcription, and each Party and the Arbitrator will receive a copy of the transcript, if one is made.

In witness to this Agreement, the Parties and their representatives hereby affix their signatures.

FOR COUNCIL 252, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFL-CIO)

Marvin C. Farmer
President, Council 252

FOR THE U.S. DEPARTMENT OF EDUCATION

Rodney McCowan
Assistant Secretary for Management

Negotiating Teams

Maryann G. Nelson
Chief Negotiator

Kenneth A. Mines
Chief Negotiator

John Allison

James P. Keenan

Paul R. Geib, Jr.

Andrew J. Pepin

Woodrow Mayes

Antoinette O. Sullivan

EFFECTIVE: FEBRUARY 23, 1995

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (Memorandum) constitutes an agreement between the Council of Education Locals, No. 252 (Union) and the United States Department of Education (Department). The parties have concluded that it is in their best interest to agree on the terms set forth in this Memorandum and, therefore, in consideration of the mutual understandings stated below, and of the promises made and the acts to be performed by the parties, it is agreed:

1. The Parties note that the Department has posted, through the Office of Personnel Management, five (5) positions for Counselors/Mediators in Series 301 at Grades 11-12 and 13-14.

   Should any bargaining unit employee (employee) in a Department Regional Office apply for a position referred to above and that employee is listed in the "Best Qualified List" provided to the Department by OPM, the Department agrees to pay all travel expenses permitted under the Federal Travel Regulations and the Desk Reference Guide for such employee to interview, in person, for the position.

   Should any employee in a Department Regional Office be selected for a position referred to above, the Department agrees to pay all expenses permitted under the Federal Travel Regulations and the Desk Reference Guide for such employee to relocate to the Washington, D.C. metropolitan area.

2. The Department and the Union agree that, when use of the Problem Resolution Procedure is required as a prerequisite for Employee Grievances under Article 42 of the Collective Bargaining Agreement, employees may use either the Informal Dispute Resolution Center (IDR Center) process or the Collective Bargaining Agreement's Problem Resolution Procedure for the informal stage of dispute resolution. The only exception to this rule is that employees raising issues of discrimination covered by Federal equal employment opportunity statutes must use the IDR Center process. The Problem Resolution Procedure is no longer available for these discrimination issues.

   Upon completion of either the IDR Center process or the Problem Resolution Procedure, an employee may utilize the Employee Grievance Procedure, in accordance with the time limits specified below, to grieve matters covered by the Employee Grievance Procedure. A copy of the counselor's report and Notice of Right to File must be appended to any grievance filed following IDR Center counseling.

   Matters covered by other negotiated grievance procedures contained in Article 42 (e.g., the Expedited Grievance Procedure), and other matters for which the Problem Resolution Procedure is not required, are excluded from coverage of this Memorandum. Grievances over such matters must be filed as provided by those other procedures. However, the parties to a dispute may, if they agree, use the IDR Center process in such cases under the same terms as provided by the Problem Resolution Procedure in Section 42.05(j) of the CBA.

(a) **Election of procedures.**

Except as provided above, a bargaining unit employee may elect to pursue either the IDR Center or the Problem Resolution process, but not both. The election of the Problem Resolution Procedure is made when an employee timely requests the designation of facilitators from either party as set forth in Article 42, Section 42.05(c) of the Collective Bargaining Agreement (CBA). The election of the IDR Center process is made when an employee timely states to an IDR Center counselor that he or she wishes to utilize the IDR Center counseling and/or mediation process. A request for information about either process without a request to enter that process does not constitute an election.

(b) **Time Limits and Procedures.**

Time limits and procedures for employees using the IDR Center process shall be those established by the IDR Center. Certain time limits and procedures for the Problem Resolution Procedure are adjusted by this agreement in order to provide consistency between both procedures' entry and close out time limits.

(i) Employees choosing to use the Problem Resolution Procedure must request facilitators as provided in Section 42.05(c) of the CBA within 45 calendar days of the date of the incident giving rise to the concern, or of the date the employee first becomes aware of the matter out of which the concern arises. Within this 45 day period, it is expected that the employee will present the concern to the involved supervisor or manager, and the manager will respond as provided by Sections 42.05 (a), (b), and (c) ("initial process").

If this initial process has not been completed by the date facilitators are requested, the facilitators shall accept jurisdiction, but shall delay processing the matter until the initial process has been completed. In such cases, the time provided in the CBA for facilitation shall be extended by the amount of time required for completion of the initial process. However, if both facilitators agree, and after consultation with the employee and supervisor involved, the facilitators may extend, shorten, or waive the initial process depending upon the needs of the parties and the facilitators' assessment of the potential value of the initial process to the parties in that case.

(ii) The time limit for filing grievances after expiration of the Problem Resolution Procedure shall be 15 calendar days, instead of the 10 work days provided in Section 42.06(a). The time frame for filing grievances following early closure of the Problem Resolution Procedure shall also be 15 calendar days, instead of the 5 work days provided by Section 42.05(f). The time limits for filing Expedited Grievances and other types of grievances under the CBA are not altered by this Memorandum.

3. At the conclusion of the sixth month following the effective date of this Memorandum, the parties will assess whether technical or procedural changes may be desired in this agreement or to either the IDR Center or Problem Resolution process.

4. The parties may represent that this Memorandum is being prepared, but will not become effective until date of the last signature, as dated below.

The parties having the opportunity to adequately read the above-stated provisions accept the terms of this Memorandum by affixing their respective signatures below.

For the Department:

Frank Furey
Director, Office Hearings and Appeals

Date: 7/8/97

James P. Keenan
Director, Labor Relations Group

Date: 7/8/97

For the Council of Education Locals:

Marvin C. Farmer
President, Council of Education Locals,
No. 252, AFGE

Date: 07/08/97

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